UNAIDS Reference Group on HIV and Human Rights*

Report of Main Conclusions and Recommendations
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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.

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Welcome and update on recommendations from the last meeting

Deborah Landey (Deputy Executive Director, UNAIDS) welcomed participants on behalf of Peter Piot, (Executive Director, UNAIDS). Having just come back from meetings in Honduras, Antigua, Uganda, and Poland, she noted that it was horrifying to hear the testimonies people living with HIV and most-at-risk of HIV tell about human rights violations in every aspect of their lives. These included: breaches of confidentiality; the fact that many countries still have no laws against marital rape and that proposals for such laws languish for years on parliamentary agendas; and that many countries continue to be reluctant to meaningfully involve people living with HIV and those at risk in all aspects of the response to HIV. She said that the human rights challenges remain enormous and that much greater action and leadership were required to address them, highlighting in particular the need to devote attention to human rights actions for universal action in national responses to HIV and to move from abstract to programmatic human rights interventions. In this regard, she congratulated Reference Group members Jonathan Cohen and Ralf Jürgens for the declaration, “Human Rights and HIV/AIDS: Now More Than Ever” and said that human rights indeed needed to be put at the centre of the response to HIV. She noted the date of the 2008 High Level Meeting on HIV/AIDS (10-11 June 2008, with Botswana and Estonia leading the review), said that UNAIDS was hopeful there would be a high-level panel discussion on human rights, and encouraged the Reference Group to strongly advocate for increased attention to human rights issues at the High Level Meeting. She concluded by noting that UNAIDS hopes to build capacity of its staff on human rights, and that significant funding has been budgeted for this purpose.

Mark Heywood, Chair of the Reference Group, also welcomed participants. He noted that the agenda of the meeting, while dense, tried to establish continuity between issues on the agenda of the seventh meeting that required further action (such as criminal law, HIV testing and counselling, sex work, and monitoring of universal access), and new issues that had emerged since the last meeting and required urgent attention, such as legislation on HIV, guidance to UNAIDS staff on how to respond to HIV-related human rights violations, and efforts to protect and promote the rights of people who use drugs in the context of HIV, including in the context of the 2009 political meeting on drugs. He expressed the hope to produce a clear set of recommendations by the end of the meeting and to have more active participation by Reference Group members between meetings.

The Reference Group then received a report from the UNAIDS Secretariat and UNDP on work undertaken by these organizations in the area of human rights since the last meeting of the Reference Group, including with regard to implementation of the recommendations of the Reference Group at that meeting. Susan Timberlake (UNAIDS Secretariat) highlighted the need to operationalize human rights and legal standards and to provide clear guidance to countries about programmes to support human rights that should be part of their national HIV plans for universal access. She noted the development of gender guidance for National HIV Programmes and suggested that similar guidance needed to be developed for human rights and legal issues, supported by an international consultation and efforts to cost programmes to support human rights and enabling legislation. She
mentioned that UNAIDS senior management continued to support human rights and gender as corporate priorities at recent staff meetings and in the process of preparing new workplans.

Julian Fleet (UNDP) acknowledged the Reference Group’s concern about limited resources (human and financial) devoted to human rights within the UNAIDS Secretariat and UNDP and noted that some staff time had been allocated within UNDP for work on gender and HIV issues, which should result in increased capacity. He highlighted the recent launch of Taking action against HIV – Handbook for Parliamentarians and encouraged Reference Group members to widely disseminate the handbook and use it in their advocacy work for better legal responses to HIV.

The Reference Group congratulated the UNAIDS Secretariat and UNDP for the work undertaken since the last meeting and for presenting in a clear format the update on work undertaken. Some suggestions were made about how this update could be further improved.

After further discussion, the Reference Group made the following recommendations:

1. The UNAIDS Secretariat and UNDP should further strengthen their capacity in order to be able to scale up action on human rights and legal issues at global, regional, and national levels. The UNAIDS Secretariat needs to increase resources for human rights work so as to enable not only production of human rights documents and tools, but also their dissemination and on-going follow-up, including support to country offices and national partners.
2. UNAIDS should facilitate a meeting on human rights and HIV with major international donors in 2008.
3. UNAIDS and the Reference Group should start planning now to ensure that key human rights issues are highlighted at the 2008 High Level Meeting.
4. UNAIDS and UNDP should add a column to the follow-up workplan presented at the meeting which would capture future actions, as well as intended deliverables and how they will be disseminated.

**Criminalization of HIV transmission**

The Reference Group received a preliminary verbal report of the International Consultation on the Criminalization of HIV Transmission and its main findings from Michael Kirby. Justice Kirby, who also attended the First Global Parliamentary Meeting on HIV/AIDS in Manila at the end of November and gave a keynote presentation on “Legislation and criminalization of transmission issues” at that meeting, noted that action by Parliaments and certain civil society groups to introduce new criminal laws related to HIV transmission may be a result of anger and frustration about the lack of success in many countries to reduce the number of new HIV infections. Parliaments in particular want to be seen to be doing something about the epidemic and resort to criminalization of HIV transmission rather than giving priority to evidence-based HIV
prevention measures that are often controversial. In addition, some advocacy groups, including some women’s rights organizations, support criminalization of HIV transmission as a way to protect women against HIV transmission, while in fact laws against HIV transmission might hurt women most, as it is women who first find out their status and thus will be first subject to prosecution. Justice Kirby reported that at the Consultation on Criminalization of HIV Transmission there was consensus about the need for caution in the introduction of new, and specific, HIV transmission statutes. In addition, participants at the consultation agreed that the truly urgent necessity in most countries is not increased criminalization of HIV transmission, but decriminalization of the present criminal law impediments that often stand in the way of effective strategies of prevention. This includes removal of criminal offences against men who have sex with men; removal of criminal sanctions on sex work so as to promote empowerment of sex workers in demanding use of condoms and safer sexual practices; and enactment of anti-discrimination laws protective of people living with HIV and AIDS and at risk of infection.

The Reference Group expressed its appreciation that its recommendation to hold an international consultation on criminalization, made at the 7th meeting, had been carried out by the UNAIDS Secretariat and UNDP. It welcomed the report on the consultation and noted that some of the calls for the use of the criminal law in response to HIV, in particular in African countries, are in response to reports of women and children having been victims of rape and defilement by people living with HIV. Criminal laws have failed to protect women against rape and protect children against sexual abuse. Increased attention should therefore be devoted to improving access to and the efficacy of the criminal justice system in the investigation and prosecution of sexual offences against women and children. This, rather than passing new laws criminalizing HIV transmission, would constitute an appropriate response to sexual crimes which might involve people living with HIV.

UNAIDS should view trends towards criminalization of HIV transmission as a threat to the goal of universal access because of the many potential negative effects, including the stigmatizing effect of criminalization and the fact that it may inhibit persons from seeking or accepting the offer of HIV testing and counselling, thus preventing them from accessing HIV care and treatment.

The Reference Group noted that the criminalization issue reinforces the need to build the human rights capacity of UNAIDS country staff.

The Reference Group requested to receive a copy of the three documents that will come out of the International Consultation on Criminalization: the meeting report, the policy brief on criminalization of HIV transmission, and the update of the 2002 UNAIDS Policy Options Paper on Criminal Law, Public Health and HIV Transmission.

It made the following recommendations to UNAIDS and UNDP:
1. UNAIDS should confirm the correctness of a rights-based approach to this issue. This means:
   - Criminal and/or public health legislation should not include specific offences against the deliberate and intentional transmission of HIV but rather should apply general criminal offences to these exceptional cases.
   - Criminal law should only be used in limited cases involving highly blameworthy behaviour.
   - Where criminal law is used, proper technologies of proof need to be available and used to prevent miscarriages of justice.

2. UNAIDS Secretariat and UNDP should ensure that the policy brief on criminalization it is preparing speaks to those who make decisions (in particular policy makers and MPs), addresses the reasons why there is a push for laws, explains why the use of criminal law may be counterproductive and potentially harmful, and suggests alternative measures that should be taken instead as past drafts have not done that adequately.

3. UNAIDS Secretariat, UNDP and other Cosponsors should continue working with the Inter-Parliamentary Union (IPU) to increase work with MPs and identify champions within the IPU who can persuade fellow parliamentarians against the use of criminalization as a prevention measure and against over-broad criminalization policies and laws.

4. UNAIDS Secretariat and UNDP should provide training to country staff on the issue of criminalization. In addition, the agencies should advise staff not to engage in legal reform processes at a country level without technical assistance from UNAIDS/UNDP HQ.

5. UNAIDS Secretariat and UNDP should ensure that criminalization of HIV transmission is on the agendas of both the human rights and gender teams, which should work closely together on it.

6. UNAIDS Secretariat and UNDP should ensure that Co-sponsors understand the issue and do not adopt a position contrary to the one adopted in the forthcoming UNAIDS policy brief on criminalization.

7. UNAIDS staff need to raise this issue as a priority with the UNAIDS Executive Director and the UN Secretary General, and encourage them to voice UNAIDS’ position in their keynote addresses at the 2008 High Level Meeting on HIV.

8. UNAIDS Secretariat, UNDP and other Cosponsors need to partner with key civil society organizations, including organizations of people living with HIV, human rights organizations, and women’s rights organizations, to strengthen civil society capacity and understanding of the issue.

9. UNAIDS Secretariat and UNDP need to increase their capacity to monitor legislative developments and to intervene before “bad” legislation is adopted. Where States have already adopted “bad” legislation, UNAIDS Secretariat and UNDP should recommend that it be revised.

10. UNAIDS Secretariat and UNDP should identify priorities for research into the impact that criminal law has on issues such as stigma, uptake of HIV testing, and prevention, and work to ensure that research into these issues will be undertaken.
11. Ultimately, UNAIDS Secretariat and UNDP will have to substantially increase their resources, financial and staff, to be able to counter this “sideshow” of criminalization of HIV transmission, while retaining (and increasing) the ability to deal with other human rights issues.

The Reference Group decided to set up a sub-committee to examine priority actions on criminalization and related legal matters and provide advice to UNAIDS about them.

**Gender guidance for national AIDS programmes**

Julian Fleet and Kristan Schoultz (UNAIDS Secretariat), who was recently appointed Director of the Global Coalition on Women and AIDS and is responsible for gender issues within the Secretariat, provided a report from the International Consultation on Gender Guidance for National AIDS Programmes (Nairobi, November 2007). They highlighted that assessments of national responses in Cambodia, Ukraine, and Honduras were conducted in June 2006 at the request of the UNAIDS Programme Coordinating Board (PCB); that Gender Guidance for National AIDS Programmes was drafted in June 2007 and commented on during the International Consultation in Nairobi; and that the Guidance would be significantly revised following the consultation and finalized by the end of February 2008, for presentation to the PCB. They noted that there was tension at the consultation between those who wanted to address all gender issues and those who wanted to focus on addressing those gender issues most closely linked to the spread and impact of HIV. They also emphasized that the “real work”, which was aimed at convincing countries to significantly increase programming on gender and HIV, would start once the Guidance is finalized, after approval by the PCB. Kristan emphasized that the final version of the Guidance needs to be practical and move beyond conceptual issues to provide clear guidance on the type of programmes supporting gender equality and women’s right that should be included in national AIDS responses.

The Reference Group commended the development of the Gender Guidance and the creation of the new position on gender issues within the UNAIDS secretariat. It urged that issues of gender and HIV be taken much more seriously, noting that there has been a lot of talk about gender in the context of HIV, but that few have taken responsibility for moving from rhetoric to real action and programmes on the ground. The Reference Group supported the focus on putting in place programmes in country that empower women, while emphasizing the need to clarify conceptual issues and to include men and sexual minorities.

The Reference Group made the following recommendations to UNAIDS and UNDP:

1. While recognizing that the higher vulnerability of women to HIV must be at the centre of the Gender Guidance and work to stem from it, further work by UNAIDS and UNDP should not neglect gender issues related to men and sexual minorities.
2. UNAIDS/UNDP should work with the idea of defining concentric rings for gender interventions, i.e., moving out from those programmes that have an immediate impact
on HIV-related vulnerability based on gender to those that begin to change structural
determinants of gender inequality.

The Reference Group decided to set up a sub-committee to assist UNAIDS Secretariat,
UNDP and other Cosponsors in their work on gender and HIV. In particular, the sub-
committee will:

- engage in the ongoing process of development of the Gender Guidance
- provide further input into the next draft of the Guidance
- prepare a one-pager on contentious (conceptual) issues
- consider issuing a statement in support of the Gender Guidance, from a
  human rights perspective, at the time of its release.

### Universal access

Susan Timberlake introduced the discussion on universal access, saying that it is high
time that UNAIDS and civil society promote universal access as a human right, and
develop ways to monitor steps toward it to ensure obstacles are overcome and promises are
kept. She noted that UNAIDS and governments are moving forward on “universal
access” without having defined what “universal” means and what “access” means. As a
result, every country has a different idea of what “universal access” means, and in some
cases, targets for achieving it appear to be somewhat randomly set. Additionally, many
national plans fail to either address the drivers of the epidemic or the epidemic among the
most marginalized populations.

Timberlake pointed out that human rights goals can be achieved through various
programmatic and policy means: (a) implementation of programmes on HIV prevention,
treatment, care and support that reach all those in need, (b) implementation of law and
policies that provide a supportive framework to enable those in need to take up available
services, and (c) implementation of programmes that are specifically designed to
overcome rights-related obstacles, such as discrimination and stigma against people
living with HIV and populations at risk, gender inequality and violence against women.
Monitoring systems and accountability mechanisms must track progress and catalyze
action in these three areas. However, to date, they have focused primarily on (a); to some
degree on (b); and almost none on (c). While there have been improvements to
monitoring tools, there is still little agreement on “human rights indicators”, and there is
need for better information that shows which populations are affected and how, and gives
insight into the quality of HIV programmes and services.

Timberlake’s presentation was followed by presentations on monitoring universal access
through UNGASS indicators (Deborah Rugg (UNAIDS) and Sofia Gruskin (Harvard)),
national strategic plans (Jantine Jacobi (UNAIDS)), and by civil society (Mary Ann
Torres, ICASO). The presentations summarized the efforts that are currently in place to
monitor progress on achieving universal access, as well as the challenges involved in
monitoring progress on human rights. Rugg pointed out the need to pay greater attention
to the development and refinement of national indicators for monitoring progress on
universal access, since the number of indicators used for global monitoring had to remain
limited in order to make that monitoring feasible. While UNGASS indicators, including
the National Composite Policy Index (NCPI), continue to provide the basis for assessing progress, including in terms of human rights, Sofia Gruskin emphasized the need to go far beyond that to ensure effective monitoring.

The Reference Group agreed that the commitment to universal access on the part of governments provides a unique challenge and opportunity for those involved in work on HIV and human rights. Thus far, the human rights community has not sufficiently seized this opportunity. It needs to hold governments accountable and urgently develop and articulate a clear vision about what it asks governments to do, from a human rights perspective, when it calls upon them to reach universal access with regard to processes, laws and policies, programmes and services, quality standards, and monitoring and evaluation systems. Existing examples of such articulations are limited and include the South African National Strategic Plan 2007-2011 and the declaration developed by 25 leading HIV and human rights organizations, ‘Human Rights and HIV/AIDS: Now More than Ever’, which was made available to Reference Group members.

The Reference Group agreed that UNAIDS, UNDP, the Reference Group itself and the broader HIV and human rights community must promote universal access much more vigorously, while at the same time being vigilant in monitoring its implementation which can lead to human rights violations. Examples of such violations include leaving out marginalized populations from scale-up efforts, or adopting rights-infringing policies (such as for example HIV testing without ensuring people are able to provide informed consent and receive adequate information), in an effort to increase the number of people tested and on treatment.

The Reference Group made the following recommendations to the UNAIDS Secretariat and UNDP:

1. As a priority of their work on HIV and human rights, the UNAIDS Secretariat and UNDP should clarify and articulate what processes, programmes and outcomes are required from a human rights perspective as part of governments’ commitment to universal access. Activities that need to be undertaken include:

   - The UNAIDS Secretariat should more clearly define what is meant by “universal” and “access”, take a rights-based approach to universal access, and speak out about the need for countries to develop ambitious plans.

   - In 2008, the UNAIDS Secretariat should work on developing guidance on programmes to support human rights in national responses to HIV (similar to the work undertaken in 2007 on gender), including guidance on what constitute valid goals of universal access, what actual programmes should be implemented, and what processes are needed at country level.

   - The UNAIDS Secretariat and UNDP should facilitate a meeting of major international donors on HIV and human rights to sensitize them to human rights issues, and why human rights are essential in effective responses to HIV, and to ensure that increased funding will be made available for the programmes to support human rights in national responses to HIV.
- The UNAIDS Secretariat and UNDP should use the opportunities provided by the 2008 High Level Meeting and AIDS 2008 to reinforce the commitment to universal access, and to clarify the meaning of universal access.

2. The UNAIDS Secretariat and UNDP should ensure that the AIDS Strategy and Action Programme (ASAP) peer review of national HIV plans captures human rights concerns – the validation process should also consider introducing an assessment based on best practice on HIV and human rights.

3. UNAIDS Secretariat should continue work to ensure that indicators of universal access are both qualitative as well as quantitative; that a human rights analysis of UNAIDS’ main indicators is undertaken; and that stand alone human rights indicators are established.

The Reference Group decided to establish a sub-committee that will:

1. Develop a short statement to guide states and civil society on universal access (looking at what human rights requires in terms of setting goals for universal access, processes, and programmes).

2. Assist UNAIDS Secretariat/UNDP in developing a list of “essential human rights activities” for universal access.

3. Continue providing input in the development of indicators.

**Responding to HIV-related human rights violations**

The Reference Group received a brief summary of a draft document, *Responding to human rights violations at country level: Guidance Note for UNAIDS Secretariat staff*, from Susan Timberlake. She noted that, in the course of their day-to-day work, UNAIDS Secretariat staff may be faced with failures of governments to respect, protect, or fulfil human rights obligations, and/or human rights violations committed against groups or individuals by public or by private actors. Staff may witness such violations, be informed of them by others, or be asked to respond in some way. While UNAIDS Geneva responds to requests for assistance from country staff as situations arise, there is need for more support to staff, outlining staff responsibilities and considerations, and the specific steps that they should consider taking under various circumstances.

Timberlake clarified that, as a member of the UN System, UNAIDS is generally responsible for the promotion of human rights, and its staff have an obligation to be guided by human rights in all their actions. Thus, there is a professional obligation to respond to human rights violations appropriately and where possible. On the other hand, there is no obligation for staff to risk their own security or well-being, or that of others, to do so.

She further clarified that things that are of concern from a human rights perspective in the context of HIV may comprise policies or practices (by commission or omission) at a national or community level that do not support, or are contrary to, a rights-based response to HIV, or they may take the form of action targeted against certain groups, organizations or individuals that puts those in immediate danger or risk. In both
situations, UNAIDS staff have the opportunity, and the responsibility, to take appropriate action, where possible. The draft Guidance Note for UNAIDS Secretariat staff is intended to help create clarity about how staff can appropriately respond to things that are of concern from a human rights perspective. She concluded by pointing out that the document has not yet been cleared by UNAIDS senior management nor has it been shared with other UNAIDS staff. It should therefore be considered a very initial draft.

Joel Rehnstrom, formerly the UNAIDS country coordinator in China, also participated and explained briefly the challenges UNAIDS faces when asked to confront claims of human rights violations from within a country.

Abigail Noko, Human Rights Officer and HIV focal point at the Office of the United Nations High Commissioner for Human Rights (OHCHR), mentioned that the OHCHR developed a rights-based approach training package for UN staff and is interested in working with UNAIDS to include an HIV component into that package.

The Reference Group welcomed the discussion stating that it raises a range of complex difficult issues and requires a deepening of the understanding of the relevance of human rights across all staff. Systematically doing this would be an opportunity for UNAIDS to pioneer an approach to human rights within the UN system as a whole.

The Reference Group made the following recommendations to the UNAIDS Secretariat:

1. The draft guidance to UNAIDS staff should be finalized and distributed in a timely fashion. In doing so the following should be borne in mind:
   - The guidance should deal with human rights approaches, not just violations of human rights: it should demonstrate how can staff support “good” policies and programmes that are being formulated, and how can they raise human rights concerns about “bad” policies and programmes.
   - The goal should be to truly mainstream human rights thinking and analytical skills among staff.
   - The guidance should not only target the UNAIDS Secretariat but ideally become guidance for staff of all the Co-sponsors.
   - The process of further development of the guidance should be seen as an opportunity to initiate discussion within UNAIDS staff about human rights. A participatory process should be used, rather than just present staff with a final document. The aim should be to increase staff capacity on human rights and to link the implementation of the guidance with training on HIV and human rights. The Reference Group should be provided with opportunities for further input.

2. UNAIDS should accept the offer from OHCHR regarding including an HIV component in the training package for UN staff.
Promoting and protecting the rights of people who use drugs in the context of HIV

Ralf Jürgens and Monica Beg (UNODC) introduced the subject. Jürgens explained that the rights of people who use drugs in the context of HIV have been neglected in national and international responses to HIV and that efforts to protect and promote these rights are particularly important at this time because of a number of upcoming events, specifically the 2008 UN High Level Meeting on HIV and the process leading to the 2009 UN High Level Meeting on Drugs and the High Level Meeting itself. Beg presented activities undertaken by UNODC on HIV among people who use drugs and said that UNODC and UNAIDS could benefit from clear guidance by the Reference Group on how to ensure that HIV and human rights issues receive the attention they deserve in the process leading to the 2009 meeting and at the meeting itself. She acknowledged that the current approach to dealing with illicit drugs can have a negative effect on efforts to provide access to prevention and treatment, care and support to people who use drugs.

The Reference Group expressed concern about the fact that people who use drugs continue to have poor and inequitable access to HIV prevention, treatment, care and support. Evidence-informed programmes that meet the health needs and human rights of people who use drugs, including a reduction in HIV incidence among them, are lacking in many countries. Where this is so, it will make the goal of universal access unattainable. In addition, the Reference Group noted that people who use drugs continue to suffer many human rights abuses, which further increase their vulnerability to HIV.

It welcomed the shift in the United Nations Office on Drugs and Crime (UNODC)’s work on HIV among people who use drugs towards acknowledging explicitly the importance of harm reduction interventions that have proven to be effective in reducing the spread of HIV, and affirmed the importance of supporting UNODC in continuing in this direction. The 2008 UN High Level Meeting on HIV and the process leading to the 2009 UN High Level Meeting on Drugs, as well as the 2009 High Level Meeting itself, offer an important opportunity to highlight health and human rights of people who use drugs.

However, unless a concerted effort is made, the risk is that, instead of including an increased focus on HIV and human rights, any declaration coming out of the 2009 High Level Meeting will continue to focus nearly exclusively on drug supply and drug demand reduction efforts.

Abigail Noko reported that the OHCHR has identified people who inject drugs (as well as prisoners, men who have sex with men, and sex workers) as a priority area for its work on HIV, and is planning to articulate the human rights issues related to HIV and drug use as part of that work. She welcomed any guidance the Reference Group could provide as the OHCHR undertakes this work.

The Reference Group agreed on the following actions:
1. Write to Peter Piot suggesting that issues related to health and human rights of people who use drugs should be put on the agenda of the UNAIDS Committee of Co-sponsoring Organizations in light of the unique opportunities and threats provided by the 2009 High Level Meeting. In particular, in the letter the Reference Group will ask Peter Piot: (a) that he work with the heads of Co-sponsors to ensure that health (HIV, hepatitis C, TB) and human rights issues in the context of drug use be one of the focus issues of the 2008 High Level Meeting on HIV and of the 2009 High Level Meeting and process leading to it; (b) that a concerted effort be made to proactively ensure meaningful involvement of civil society, including HIV organizations and organizations of people who use drugs, in both meetings and processes; (c) that a process of NGO shadow reporting should be facilitated; and (d) that he and the heads of Cosponsors speak out publicly on the health and human rights of people who use drugs.

2. Develop a 1-page public statement on issues related to health and human rights of people who use drugs, in the context of the unique opportunities and threats provided by the 2009 High Level Meeting, and revise the Reference Group issue paper on “Upcoming opportunities to promote rights-based approaches to universal access to HIV prevention, treatment, care and support for people who use drugs” as annex to this statement.

3. Write a letter to ICASO and UNAIDS recommending that the HIV and human rights issues of people who use drugs be the focus of one of the sessions and of civil society hearings at the 2008 High Level Meeting on HIV.

4. Provide input into the OHCHR effort to articulate human rights issues related to HIV among people who use drugs.

5. Assist efforts to identify UN member states that have a progressive human rights approach to drug use, with a view toward placing this issue on the agenda at the World Health Assembly, including NGOs on country delegations to the Drugs review, and getting HIV on the agenda of the Drugs review.

The Reference Group made the following recommendations to the UNAIDS Secretariat and UNDP:

1. Show leadership and speak out on these issues, recognizing that UNODC, while having undergone significant changes internally, still hesitates to speak out on these issues publicly because of political pressure from some donors.

2. Work with the Inter-Parliamentary Union on protecting and promoting the rights of people who use drugs in the context of HIV, as one priority area of follow-up to the launch of handbook on HIV for parliamentarians.

3. Act on the Reference Group recommendations in its letter to Peter Piot.

4. Offer to support UNODC in increasing civil society involvement in the Commission on Narcotic Drugs. UNODC should consider using the strategies deployed by UNAIDS for similar high-level meetings, such as issuing a tender to a large NGO to coordinate broad and meaningful civil society participation.

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1 Reference Group members noted that, as part of this, efforts need to be undertaken to ensure that appropriate care and support, including opioid substitution treatment, will be available to people who use drugs participating in the High Level Meetings.
**Provider-initiated testing and counselling**

Ralf Jürgens reported about the activities undertaken by the Reference Group since its last meeting on provider-initiated testing and counselling and, more broadly, on ensuring that HIV testing and counselling are scaled up while respecting human rights. He referred to the release of the Reference Group recommendations on HIV testing and counselling and the subsequent exchange of letters between Mark Heywood and Kevin de Cock, Director of the WHO Department of HIV/AIDS.

The Reference Group then heard from Donna Higgins and Ying Ru Lo, WHO Department of HIV/AIDS, about activities undertaken by WHO to ensure scale-up of HIV testing and counselling. They mentioned that WHO, jointly with UNODC and UNAIDS, is developing specific guidance on scaling up HIV testing and counselling for two of the most marginalized populations, people who inject drugs and prisoners, and that efforts are also underway to develop guidance for people at risk of being trafficked and sex workers, as well as guidance on monitoring and evaluation. A new version of the WHO and UNAIDS Policy Statement on HIV testing is also being prepared. They acknowledged that WHO cannot ensure that the WHO/UNAIDS Guidance on Provider-initiated Testing and Counselling in Health-Care Settings is being rolled out with all elements recommended in the Guidance in place. In particular, they acknowledged that, while the Guidance states that “simultaneous with implementation of provider-initiated HIV testing and counselling, efforts must be made to ensure that a supportive social, policy and legal framework is in place”, these efforts lag behind efforts to implement PITC. They said that WHO and UNAIDS needed assistance from the Reference Group to ensure that guidance will be created specifying what exactly countries need to do to create the “enabling environment” that is a pre-requisite for implementation of PITC, and highlighted that currently available funding for scale-up of PITC does not necessarily include funding for the legal and social protections specified in the Guidance.

They acknowledged the danger of this and, more generally, that there is “a lot of misuse of the Guidance” and suggested that the Reference Group could request again that more be done to ensure appropriate use – rather than misuse- of the Guidance.

Some Reference Group members provided examples of how, in their countries, the PITC Guidance is being used to legitimize testing without informed consent. They also expressed ongoing concern that scale-up of testing and counselling is not part of a broader, integrated effort to increase access to prevention, care, treatment and support and to provide a supportive environment, but rather is being implemented separately and without the other elements being in place.

The Reference Group made the following recommendations to WHO, UNAIDS Secretariat, and UNDP:
1. Publicly clarify that people need to be able to give informed and truly voluntary consent to HIV testing and counselling and that the agencies oppose mandatory HIV testing (recognizing this is not enough, but still needs to be done in light of evidence of misuse of the Guidance).

2. Ensure that UNAIDS Secretariat and UNDP have early input into the revised Policy Statement on HIV Testing and that the Reference Group has early opportunity to comment, as well as provide input at later stages of drafting.

3. Senior management of UNAIDS Secretariat and UNDP should meet with WHO to develop a plan to ensure that all elements of the PITC Guidance are implemented, and to agree on mutual responsibilities.

4. Appeal to donors to fund all elements of the PITC Guidance and not to fund HIV testing and counselling alone, without providing funding that allows to put the other necessary elements in place.

5. WHO, UNAIDS Secretariat and UNDP should make issuing of guidance on legal and social protection a priority.

6. The UNAIDS Executive Director should publicly express concern about the risk that the PITC Guidance may be misinterpreted and implemented without putting all necessary elements, in particular human rights protections, in place.

The Reference Group agreed on the following actions:

1. Prepare a letter to UNAIDS Executive Director expressing concerns about the findings that emerged at the RG meeting.

2. Provide comments on (a) revised Policy Statement on HIV Testing; (b) policy statement on testing for people who use drugs; (c) policy statement on testing for prisoners; (d) any other upcoming policy statements on testing (such as for sex workers and people vulnerable to trafficking).

**Human rights-based approaches to sex work and HIV**

The Reference Group engaged with UNFPA and UNAIDS Secretariat regarding the draft guidance document on HIV and sex work and clarified its status as the following: the guidance is currently an internal document that will be revised after additional consultation and then released.

The Reference Group supported the aim to build consensus around the crucial issue of sex work among UNAIDS Co-sponsors, but noted that the process of doing this had raised both expectations and misunderstandings.

The practice of sex work and the social response to it raises crucial human rights issues. The response of UNAIDS should therefore be clearly guided by the duty to protect the human rights of people involved in sex work.
The Reference Group made a number of specific comments on the current draft and agreed to make a formal written submission on it. It received assurance that its comments would be seriously considered.

The Reference Group made the following recommendations to UNFPA, UNAIDS Secretariat, and UNDP:

1. That the guidance be rewritten taking the comments provided by the Reference Group into account, which in turn will reflect concerns from sex worker communities.
2. That the Reference Group be consulted on the ongoing drafting of the document.
3. That a Reference Group member be invited to participate in a meeting scheduled for December 10-11 that will discuss the draft guidance.

The Reference Group agreed on the following actions:

1. Prepare written submission on the sex work guidance
2. Continue to undertake follow-up throughout the process leading to a final draft

Reference Group issues

Susan Timberlake explained that UNAIDS has four expectations of the Reference Group:

(1) To bring to UNAIDS the critical human rights issues that UNAIDS must address and provide UNAIDS support to do it;
(2) To extend UNAIDS’ human rights capacity;
(3) To enlarge the human rights partnerships, including to begin to groom a new younger generation of human rights activists;
(4) To help UNAIDS transform human rights principles into programmes.

The Reference Group accepted these challenges and discussed several issues related to how it can work most effectively to provide not just advice but additional capacity to UNAIDS on issues related to HIV and human rights.

The Reference Group discussed:

- its revised Terms of Reference, clarifying that the Reference Group may occasionally speak and act publicly on its own initiative in a way which may not reflect in every instance the view of UNAIDS;
- how public statements by the Reference Group should be developed and how they can best be disseminated, expressing that the Reference Group should: (a) issue such public statements only in exceptional cases, such as when it feels that an issue is not being adequately addressed by the UNAIDS Secretariat and/or co-sponsors and there is a serious threat to the human rights of people living with or at risk of HIV; (b)

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2 This meeting has been postponed pending receipt of the Reference Group comments.
3 The recommendations by the Reference Group regarding the "UNAIDS Guidance Note on HIV and Sex Work" were submitted to UNAIDS and UNFPA on 16 February 2008.
always attempt to issue consensus statements and recommendations, but if necessary reflect where issues remain contentious among Reference Group members and make majority statements;

- the role of issue papers as (a) facilitating discussion at meetings and (b) once revised, after a meeting, as providing guidance to a broader audience, particularly UN staff;
- the structure of future meetings, expressing a need for a less packed agenda allowing for more focus on a smaller number of issues.

Mark Heywood made a number of concrete suggestions relating the functioning of the Reference Group:

- Dates of Reference Group meetings should be set far in advance of a meeting in order to facilitate attendance by the greatest possible number of members.
- The Reference Group should not seek to be an independent review board for everything within UNAIDS that has human rights implications, but should instead focus on key documents on the most relevant issues. This acknowledges that the Reference Group is not an expert group on all human rights issues, as well as the fact that only a few Reference Group members tend to respond to calls for input.
- Reference Group members should commit to greater engagement in-between meetings, with appropriate support by the Chair and the Secretariat.
- Issue papers should be prepared with the input of Reference Group members with a particular expertise on the issue, and conference calls on each major issue to be discussed at Reference Group meetings could be held before the meeting, including the author of a particular paper and the chair of a session, to clarify goals and expectations.

Jeff O'Malley, a former Reference Group member and now recently appointed as Head of the HIV programme at UNDP, was on line with the Reference Group. Jeff explained that he is in the midst of reexamining the content and process of UNDP’s lead role on human rights and will have further discussions on that with the UNAIDS Secretariat and the Reference Group.

The Reference Group thanked Mark Heywood for his leadership as Chair and Ralf Jürgens for his support as Secretariat, and asked both Mark and Ralf to continue in their functions in order to ensure continuity.

The Reference Group agreed on the following actions to be taken by the Reference Group Secretariat:

1. Finalize the revised Terms of Reference based on the discussion at the meeting.
2. Facilitate and encourage greater involvement by members in-between meetings by scheduling conference calls to discuss major papers or other documents the Reference Group is asked to comment on.
Model legislation on HIV

At the Eighth meeting, December, 2007, the Reference Group ran out of time and was not able to discuss this item. It decided it would hold a conference call in early to mid-January 2008 devoted to this issue and that Reference Group members could submit their concerns and suggestions in advance of the meeting.

This conference call was held on 30 January 2008. During the call, the Reference Group discussed a number of issues related to HIV-related legislation that contravenes human rights and may hinder much-needed HIV prevention and care and treatment efforts.

Susan Timberlake and Julian Fleet introduced the issue. They highlighted that supportive legislation – accompanied by capacity for implementation and enforcement – is an essential part of effective national responses to HIV, and achievement of universal access to HIV prevention, treatment, care and support. Legislative provisions must reflect human rights commitments and support the realization of human rights in the context of the epidemic. At the same time, however, “bad law can make for a bad response to HIV.”

Law reform can be cumbersome and lengthy, and how to best support it – in ways that are participatory and promote human rights – is a significant challenge. Timberlake and Fleet recognized that much more needs to be done to overcome barriers to prevention and treatment, and create a legislative basis for the conditions and the programmes that reduce vulnerability to HIV and its impacts. They noted that within UNAIDS, UNDP has the lead agency role in the division of labour to provide technical assistance in the area of law, and has a number of law-related activities at regional and country levels.

At present there are a number of ongoing activities related to law and HIV:
- the N’Djamena law in West Africa
- the efforts of the Canadian HIV/AIDS Legal Network to develop model legislation that would protect women in the context of HIV
- the Southern African Development Community Parliamentary Forum efforts to support the development of model “omnibus” legislation on HIV.

The Reference Group decided to prioritize discussion of the N’Djamena law as it requires urgent action. Ten countries in West Africa recently adopted “model” HIV legislation that contains many provisions that are not in line with human rights-based approaches to HIV. There is serious concern that eight other countries in the region will soon adopt laws based on the N’djamena law and, more broadly, that it may influence laws in other African countries.

A number of civil society organizations have taken action to try to prevent this. Among other things, they wrote to UNAIDS, UNDP, OHCHR, and UNIFEM expressing their concerns with the legislation and urging UNAIDS to provide explicit guidance on rights-based HIV legal frameworks to countries in the region. The Reference Group shared their concerns and supported their demand for greater leadership from the UNAIDS Secretariat and UNDP.
The Reference Group also had an initial brief discussion about broader issues related to the development of legislation in the area of HIV, focusing in particular on potential promises and problems of efforts to develop “model legislation” and on efforts to increase the capacity to more systematically monitor and support law reform processes. The Reference Group expressed its appreciation that UNDP is planning to increase its capacity to monitor and support law reform processes, so that UNDP and UNAIDS can usefully intervene before laws that are inconsistent with human rights norms and hinder HIV prevention, treatment and care are enacted.

The Reference Group decided to:

- send a briefing note to Peter Piot urging him and the UNAIDS and UNDP offices to:
  - make public statements about the harms of HIV legislation that fails to respect and promote human rights
  - clearly state that the N’djamena law has provisions which violate human rights and best practice in addressing HIV
  - call for the revision of the law where needed
  - support the UNAIDS regional office in Dakar to increase advocacy and capacity on the issues related to the N’djamena law
  - offer to the concerned governments help by among other things, providing alternative wording for the problematic provisions contained in the law.
- establish a sub-committee that will examine legal developments more closely and undertake a number of activities that will assist UNAIDS and UNDP in supporting appropriate HIV legislation, including studying the potential benefits and risks associated with the development of model legislation.

Presentation of Reference Group conclusions/recommendations to UNAIDS Deputy Executive Director

Mark Heywood thanked UNAIDS for its continued support of the Reference Group and Michel Sidibe, UNAIDS Deputy Executive Director, for being a great friend of human rights. He reported on the outcomes of the Reference Group’s deliberations and noted that universal access will never become a reality if UNAIDS does not continue to commit strongly to human rights and gender. He highlighted the importance of increasing UNAIDS’ efforts to advance human rights at the country level and, more generally, its capacity to deal with human rights issues. On behalf of the Reference Group, he asked Mr Sidibe to consider increasing the funding and resources available for human rights within UNAIDS and to raise this issue with the donor community. He noted that the Reference Group would provide a summary of all its recommendations to UNAIDS, but that two issues required urgent attention: the UNAIDS guidance on sex work, which, unless corrected, will harm efforts to provide evidence-informed, human rights-based prevention and treatment, care and support interventions for sex workers; and the WHO/UNAIDS Guidance on PITC, which is being implemented without adequate attention being given to some of its components, notably the establishment of supportive policy and legal frameworks.
Mr Sidibe thanked the Reference Group members for their hard work. He said that, in his view, all UNAIDS staff should be trained on the human rights aspects of the response to HIV and should be “human rights-oriented persons”. He appreciated the fact that the Reference Group focused on human rights actions for universal access, noting that national AIDS plans often are not designed to deal with the drivers of the epidemic or with vulnerable populations. He continued by saying that if HIV continues to spread and people are not receiving treatment, it is because human rights are not at the centre of the response to HIV. He acknowledged that while funding for commodities has increased dramatically, funding to address human rights issues and implement human rights and legal programmes remains extremely limited.

Reference Group members thanked Mr Sidibe and encouraged UNAIDS to be an activist organization within the United Nations, expressing enduring and real commitment to human rights, training its staff on human rights, rewarding them for being human rights activists, and displaying leadership on human rights at the highest level, as well as in the regions and at country level.

ENDS