ISSUE PAPER FOR THE SESSION:  
DRAFT recommendations brief to the incoming 
UNAIDS Executive Director

UNAIDS Reference Group on HIV and Human Rights

Recommendations Brief to the incoming
UNAIDS Executive Director

Context 2008

Sufficient attention to human rights is essential to an effective response to HIV, as well as to the policies, expenditures and programmes of the UNAIDS Programme

1. Attention to human rights is needed now more than ever in the response to HIV in order to reorient and support governments and communities to address the following realities of the epidemic and the response.

2. National responses continue to fail to address the actionable intersections between vulnerability to HIV infection and impact and the legal, social, and political forces that drive such vulnerabilities.

3. National responses continue to fail to address the controversial issues at the heart of the epidemic: gender inequality, violence against women, harmful male gender norms, age disparate sex and underage sex, sex out of marriage, sexual violence and coercion in relationships and marriage, sex work, same sex sex, drug use, stigma and discrimination, marginalization and criminalization of populations at risk.

4. Most national responses fail to address the fact that most of the human rights-related vulnerabilities to HIV and most of the impact of the HIV epidemic occur in homes and communities. These involve relations between sexual or drug-injecting partners; family, workplace and community stigma and discrimination; support and care-giving; and enabling or disabling formal and traditional laws, as well as cultural and religious norms. These issues must be addressed in communities and among leaders through much greater support to initiatives in the legal, cultural, economic and religious spheres.

5. Most national responses continue to fail to direct sufficient resources, programming and political commitment to the populations most affected by HIV infection and its impacts: women, young people, orphans, vulnerable children and
children living with HIV, people who use drugs, sex workers, men who have sex with men, prisoners, and care givers.

6. Women and young people continue to be disproportionately affected and infected, but their vulnerabilities and needs are not adequately addressed in the following ways:

   a. Sufficient programmes, as well as the enactment and enforcement of laws and policies, to address some of the root causes of women's vulnerability to HIV infection, including gender-based violence and gender inequalities, are not being implemented.
   b. Young people often lack access to appropriate information, education and services to prevent HIV, as well as to treatment, care and support where infected.

7. Criminalised and marginalised populations, although often disproportionately affected by HIV, receive the least attention in national HIV responses and face major barriers to accessing HIV prevention, treatment, care and support.

8. Trends to “remedicalize” the response to HIV by focusing on biomedical “quick fixes”, such as universal testing/”know your status” campaigns, fail to acknowledge that AIDS often derives from and generates social inequalities, stigma and discrimination and other human rights abuses.

9. Proposals to strengthen health systems, suggesting that limited HIV funds be reallocated from “multi-sectoral responses” towards strengthening health systems, fail to balance the imperative to scale-up medical and health-systems responses as part of the right to the highest attainable standard of health with the need to address the human rights violations that continue to drive HIV vulnerability, exacerbate the epidemic’s impact, and impede access to HIV-related services. A human rights framework avoids a dangerous and distorting “either/or” debate in favour of a universal framework that emphasizes the inherent dignity of all persons and the mutuality and necessity of medical and non-medical approaches to HIV.

   a. Responses to HIV fail to include comprehensive and evidence-informed HIV prevention programmes. Too often, the most critical programmes are delivered exclusively by under-resourced NGOs. While this has often empowered such NGOs and promoted effective community-based approaches to prevention, it has also represented in many places a failure of governments to take up their human rights obligations and an undue and unrealistic burden on civil society.

10. Increasingly, punitive laws that seek to “deter” (e.g. transmission of HIV) or “enforce” (e.g. disclosure of HIV status) certain behaviours are being passed. Such laws are unlikely to prevent new infections or reduce women’s vulnerability to HIV, and in fact may negatively impact both public health and human rights. At the same time, many countries fail to pass and/or enforce laws that would:
a. protect women from gender inequality and sexual violence  
b. protect people living with HIV from discrimination  
c. decriminalize key populations at risk and protect them from discrimination and violence  
d. remove barriers to provision of comprehensive and evidence-informed HIV prevention, treatment, care and support, and  
e. support access to essential medicines through appropriate intellectual property law.

11. There are major global issues competing for political commitment and funding that could make it even more imperative to ensure that resources to address HIV are spent both effectively AND equitably.

12. There is great concern among many AIDS activists that the commitment to achieving universal access to HIV prevention, treatment, care and support is waning.

_The UNAIDS Programme’s capacity and commitment to address human rights must be strengthened._

13. Though the UNAIDS Secretariat and 10 UN system organizations that comprise the UNAIDS Programme all operate more or less under the aegis of the UN Charter and its obligation to promote human rights, they each embrace human rights and rights-based responses to HIV in different ways. Some organisations have human rights built into their mandate; some have formal statements of commitment to rights-based approaches; and some have no explicit or formal commitment to such approaches.

14. In December 2006, the 19th PCB endorsed the 2007-2010 Strategic Framework as the principal guide to global, regional and country-level planning, implementation and monitoring of progress of the Joint Programme’s efforts to move towards the goal of universal access. The framework lists among its Strategic Directions - "Human rights, gender equality and reduced vulnerability of most-at-risk populations".

15. While the UNAIDS Programme has no elaborated statement of commitment to human rights, throughout its history it has consistently embraced the importance of human rights in the response to HIV – even though commitments to and interpretations of human rights are uneven across the Programme as a whole. In the division of labour on provision of technical assistance to countries, UNDP is the lead, among other things, on enabling legislation, human rights and gender.

16. A major aspect of the strength of the UNAIDS Programme, under the coordination of the UNAIDS Secretariat, has been its human rights orientation in the response to HIV – standing by and supporting the voice of those affected, challenging the inequities at the heart of the epidemic, and speaking out on behalf of the most marginalized.
17. The UNAIDS Programme must continue to and indeed strengthen its commitment and capacity to support governments, donors, bilateral agencies and communities to address the human rights issues in the HIV epidemic. Without this orientation, based on its UN system human rights mandate, the UNAIDS Programme loses its unique added value and risks becoming a “second rate development actor among many”, with far fewer financial resources.

**Recommendations**

**A. Human rights, gender and GIPA should remain corporate and cross-cutting priorities, and the UNAIDS commitment to these should be intensified and elaborated.**

18. The Executive Director should reiterate that human rights, gender and the Greater Involvement of People Living with HIV (GIPA) remain the corporate and cross-cutting priorities of the UNAIDS Programme. S/he should call for:

- development of a comprehensive strategy by which to ensure that the commitment to these priorities is understood, rewarded and measured throughout the Programme.
- a review of programme capacities and resources on these three corporate priorities
- a strategy by which to ensure that there is greater collaboration and strategic planning regarding how different elements in the programme promote and integrate these priorities in their work, including at national level.

19. The Executive Director should review the placement of human rights, gender and GIPA in the Secretariat with a view to making changes that will ensure that:

- human rights, gender and GIPA are understood as corporate priorities
- every manager and staff member has obligations to reflect these priorities in their work and that staff performance will be judged in these terms
- supporting UNDP as the lead technical agency, the core function of the teams dedicated to these priorities is to support the integration of these priorities into the policy, funding and programmatic initiatives of the Secretariat, and to provide support and input to Secretariat staff to enable them to “make the money work for human rights, gender and GIPA”.

**B. The commitment of the UNAIDS Programme to universal access to HIV prevention, treatment, care and support should be intensified.**

20. The Executive Director should continue and intensify his or her commitment to universal access. The goal of universal access is a framework for equity and accountability in the response to HIV. Reaching universal access is also a vital and necessary step in achieving key aspects of various human rights (in particular the rights to the highest attainable standard of health, education, employment, social support, the benefits of science, equality of women and the
rights of the child) and a fundamental component of achieving several of the Millennium Development Goals.

21. The Executive Director should ensure that the UNAIDS Secretariat more clearly defines what is meant by “universal” and “access”, takes a rights-based approach to universal access, and speaks out about the need for countries to achieve appropriately ambitious targets.

22. The Executive Director should push for equitable access to prevention, treatment, care and support by vulnerable and marginalised communities that in some countries are being left out of efforts to scale up access.

23. The Executive Director should also call for a fourth pillar on which universal access must rest – “non-discrimination” (in particular, non-discrimination against people living with HIV, against women and against most at risk populations). The Executive Director should ensure that sufficient political, funding and programmatic attention is devoted to the realization of non-discrimination, highlighting that – as is the case with universal access to HIV prevention, treatment, care and support – it will never be achieved without such attention.

24. The Executive Director should call for the development of recommended indicators in the context of achieving universal access by which to measure whether:

- people affected by HIV are aware of their rights and have access to remedies
- sufficient programmes to address sexual violence and gender inequality in the context of HIV are in place
- children affected by HIV are receiving protection and support
- caregivers are benefiting from economic empowerment programmes and social support
- laws and policies protecting people living with HIV and vulnerable populations (including sex workers, men who have sex with men, people who use drugs and prisoners) are in place and adequately enforced
- laws and law enforcement practices that create barriers to HIV prevention, treatment, care and support have been removed.

C. The commitment to rights-based responses to HIV throughout the UNAIDS Programme should be made more explicit.

25. The UNAIDS Executive Director should increase his/her leadership and advocacy for rights-based approaches to the HIV epidemic. This should be made concrete by:

a. A formal statement of commitment to rights-based approaches to HIV by the Executive Director.

b. The development by the Executive Director of a strategy by which to ensure human rights input and analysis of all major initiatives and activities in the
UNAIDS Programme, as well as national responses to HIV, with the support of UNDP

c. The development of a communications strategy on rights-based approaches to HIV for senior management in the UNAIDS Secretariat and senior managers in the Cosponsors working on HIV, in collaboration with UNDP.

d. The development and implementation of training, core competencies and performance review indicators on rights-based approaches to HIV for all professional staff of UNAIDS Secretariat and UNDP working on HIV, as stand-alone training and/or through integration with other management training including on results-based management (to also be made available to staff of other Cosponsors). This training would include commitment to the promotion of rights-based approaches to HIV that:

- Seek to empower rights-holders (vulnerable and affected communities) to claim rights and duty-bearers (governments and international community) to protect and realize rights in the context of the response to HIV.
- Seek to ensure that HIV structures, processes, policies and programmes are implemented in ways that support human rights principles: non-discrimination, inclusion/participation, accountability, responsibility and transparency.
- Seek to ensure that HIV structures, processes, policies and programmes further the protection and realization of human rights standards.
- Seek to ensure that HIV structures, processes, policies and programmes include the appropriate funding and support to address rights-related drivers of the epidemic and community and individual vulnerabilities.
- Empower and support UN system staff to exercise the “human rights challenge function”, where necessary, that is where governments, the international community and donors are not responding to the needs of those most affected by HIV (either vulnerable to infection or living with HIV) with sufficient political attention, resources, programming and where individual cases of human rights violations are occurring in the context of the response to HIV.

D. The commitment to a multi-sectoral response to HIV, including community empowerment, should be renewed and strengthened.

26. The Executive Director should increase efforts to ensure that the response to HIV remains multi-sectoral, as well as supportive of sufficient community and individual empowerment and protection in the face of HIV.

27. The Executive Director should in particular ensure that efforts are increased to empower individuals and communities to know their rights and be able to demand them in their own social and cultural contexts; and to engage and empower different sectors in national and local government to realize those aspects of human rights critical to effective responses to HIV.
28. The Executive Director should resist calls to medicalize and/or reduce the response to single sector or “quick fix” strategies. Rather, as part of an intensified commitment to a rights-based response, the Executive Director should first seek to develop a strategy to reenergize the roles, commitments and comparative advantages of the Cosponsors and Secretariat. Secondly, the Executive Director should ensure that his/her own staff, as well as that of the Cosponsors, at national level are sufficiently engaging with and supporting key sectors that have too often been ignored in the HIV response, e.g. Ministries of justice, interior, gender, labour, migration, tourism, armed services, foreign affairs, and the other branches of government, i.e. the Parliament and Judiciary. Clearer systems of accountability for the Secretariat and Cosponsors in the programme, as well as for key sectors at country level, should be developed to support this multisectoral response.

29. With regard to health system-strengthening, the Executive Director should support initiatives aimed at strengthening health systems, while emphasizing that they are only one, albeit important, component of efforts to realize the right to the highest attainable standard of health. Such initiatives should be additive and not divert attention and resources from the need to address other critical social systems (e.g. education, justice) and the human rights violations that continue to drive HIV vulnerability, exacerbate the epidemic’s impact, and impede access to HIV-related services. The Executive Director should ensure that the UNAIDS Programme develop guidance and training for all relevant staff, particularly those at country level, to enable them to (1) monitor and avoid any negative consequences of vertical spending on HIV and (2) track, support and enhance the positive impacts of the response to HIV on health and other systems, as appropriate.

E. Particular programmes to support human rights and community empowerment in the response to HIV should be vastly expanded.

30. The Executive Director should ensure that there is sufficient commitment to the funding, planning, implementation and monitoring and evaluation of programmatic responses supporting human rights empowerment in national HIV responses. As a priority, the Executive Director should call for the development of guidance on programmes to support human rights in national responses to HIV, in the context of supporting countries towards universal access to HIV prevention, treatment, care and support. These programmes include the following:
   a. “know your rights” and laws campaigns
   b. legal aid for people living with HIV and members of vulnerable and marginalised populations at higher risk of HIV, provided in various forms: formal legal services, community paralegals, community dispute resolutions under traditional laws
   c. programmes to ensure adequate training in non-discrimination, informed consent and confidentiality for health care workers
   d. programmes to ensure adequate training/sensitization of police and judges in non-discrimination, non-violence and addressing violence against women
e. programmes to reduce stigma and discrimination against people living with HIV and those vulnerable to HIV, including people who use drugs, sex workers, men who have sex with men and prisoners
f. programmes to support legal audits and law reform aimed at removing barriers to HIV prevention, treatment, care and support, including for people who use drugs, men who have sex with men, sex workers and prisoners
g. programmes to changes harmful gender norms that make men, women and young people vulnerable to HIV infection
h. programmes to address the sexual violence and coercion that place girls and women at risk of HIV infection
i. programmes to ensure urgent and sufficient attention to the provision of paediatric antiretroviral therapy
j. programmes to ensure adequate support for orphans and vulnerable children and caregivers
k. programmes to ensure that people who inject drugs and members of other vulnerable, marginalised and criminalised populations have equitable access to HIV prevention (including harm reduction measures), treatment, care and support

F. Supporting an intensified and rights-based focus on HIV prevention should become a high priority of the UNAIDS Secretariat.

31. While maintaining the full commitment to achieving universal and sustainable access to treatment, care and support, the Executive Director should aggressively expand the promotion and support of evidence-informed and rights-based combination HIV prevention, ensuring the appropriate balance among biomedical, behavioural and structural prevention programmes. The Executive Director should call for enhanced focus and articulation of prevention programmes to address structural vulnerabilities of HIV, including those programmes and strategies to address necessary social change and community and individual empowerment.

32. Furthermore, the Executive Director should call on the UNAIDS programme to develop modalities by which to ensure that, based on “know your epidemic and response” analyses in countries, all groups that need access to HIV prevention modalities and services receive them. In particular, this means support to much greater operational research, expenditure and implementation of combination prevention for:

a. women in long-term relationships
b. young people, particularly young women in age-discordant relationships
c. men and women in multiple concurrent partnerships
d. sex workers and their clients
e. men who have sex with men
f. people who use drugs
g. people in closed settings, including prisons, pre-trial and other detention centres, and forced drug treatment centres and
h. mobile populations.
33. The Executive Director should ensure that combination prevention includes much greater attention to the legal, social and political barriers to the roll out of HIV prevention, in particular, the criminalized or highly marginalized status of most at risk populations and the high levels of stigma and discrimination against people living with HIV. Some key programmes to address these are outlined in Recommendation XX.

34. The Executive Director should ensure that combination prevention also includes sufficient attention to effective social mobilisation and social change communications strategies to create demand for prevention, including a call for the “right to prevention”.

35. In addition, the Executive Director should ensure that prevention efforts include a much greater focus on people living with HIV, providing them with programmes that protect their human rights and empower them to avoid passing on the virus. These are programmes that empower positive people to seek voluntary HIV testing and counselling to find out their HIV status, access HIV treatment and stay on it, access prevention of mother-to-child transmission services, avoid sex or practise safe sex, avoid sharing injecting equipment if injecting drugs, and enable them to disclose their status.

G. Promoting gender equality can no longer be neglected.

36. The Executive Director should ensure that a major and urgent priority of the UNAIDS Programme should be to shift political attention, resources and programming to the vulnerabilities and needs of women (including young women, women in discordant couples, married women, and caregivers, as appropriate, according to a “know your epidemic and response” analysis). This requires much more funding for and implementation of a much wider range of programmes to support women and girls. In addition to the ones mentioned in recommendation XX, these include programmes to:

a. protect women from infection in marriage
b. empower women in households affected by HIV
c. keep girls in schools
d. empower women/girls to use avoid sex, practice safer sex and/or use condoms
e. ensure that women can benefit from equality in inheritance and property rights
f. ensure that laws exist against sexual violence, including in marriage, and that these laws are adequately enforced and accompanied by the services that women and girls who are victims of sexual violence need, including access to post-exposure prophylaxis.
H. Greater involvement of people living with HIV and of members of vulnerable populations must become a reality.

37. The Executive Director should intensify efforts throughout the programme to empower people living with HIV to realize their rights to participation, inclusion and self-determination. These efforts should include:

a. the development and implementation of training, core competencies and performance review indicators on the GIPA principles for all professional staff of UNAIDS Secretariat and the staff of the co-sponsors involved in HIV
b. a strategic programme-wide strategy to intensify GIPA
c. relocation of the Civil Society Partnerships and Gender Teams to the programme side of the UNAIDS Secretariat
d. advocacy with funders on the need to provide increased funding for the capacity-building and training needs of organizations of people living with HIV, recognizing that these organizations are often under-resourced and over-stretched and that greater involvement of people living with HIV must be adequately supported.

38. In addition, the Executive Director should make greater and meaningful participation of vulnerable and marginalised populations at greater risk of HIV, including women, youth, people who use drugs, sex workers, men who have sex with men and prisoners, a priority of the Programme, recognising that there are human rights and public health imperatives for their involvement in the development, implementation, monitoring and evaluation of HIV policies and programmes impacting their lives.

I. The ability to provide technical assistance on human rights, law, gender, GIPA and community empowerment must be ensured.

39. The Executive Director should promote and develop support for rights-based responses as a policy and programmatic obligation equal to that of HIV prevention, treatment, care and support. Thus, institutions and processes that provide technical assistance to national and regional responses, as well as to funding proposals and to those providing funding, should be able to provide and promote technical expertise on human rights, gender, GIPA, community empowerment, as well as on law, law enforcement and access to justice related to HIV.

J. Increasing attention must be devoted to the legal environment

40. The Executive Director should ensure that staff throughout the Programme, as appropriate, work with Parliaments, Ministries of Justice, Interior and Migration, the police and the judiciary to ensure that the legal environment (formal and traditional law, law enforcement and access to justice) is one that enables an effective, rights-based and equitable response to HIV at the national level, including for all those most vulnerable to infection and most affected by HIV.
41. Working with UNDP, the Executive Director should ensure training for staff on effective strategies to support an enabling legal environment.

K. Rights-based and gendered funding should be increased

42. The Executive Director should call for the development of a strategy by which to engage bilaterals and funding agencies and modalities to provide increased funding for rights-based and gendered responses to HIV, for community empowerment and for specific programmes to support human rights in national AIDS responses.

L. The UNAIDS Secretariat needs increased capacity to continue providing leadership on human rights

43. While supporting the role of UNDP as the lead in technical assistance to countries on human rights, gender and law, The Executive Director should call for the development of a strategy of mutual engagement, support and efficient division of labour between the UNAIDS Secretariat and UNDP regarding support to human rights, gender and law issues. This strategy should be grounded in an understanding that maintaining and increasing capacity within the UNAIDS Secretariat, at Geneva, regional and country levels, for dedicated work on human rights, gender and law issues is essential to the overall strategy to intensify the UNAIDS programme commitment to human rights, gender and GIPA.

M. Strong relationships should be maintained with the Office of the UN High Commissioner for Human Rights and regional human rights bodies

44. The Executive Director should create and maintain strong, ongoing relationships with the Office of the UN High Commissioner for Human Rights and with regional human rights institutions, calling on them to take the lead on and support many critical human rights issues related to effective responses to HIV.

N. The influence of the UNAIDS Reference Group on HIV and Human Rights should be extended

45. The Executive Director should continue to rely on the UNAIDS Reference Group on HIV and Human Rights to provide timely advice and support on emerging human rights issues and priorities, to push and support UNAIDS to fulfil its human rights mandate and to support rights-based responses at international, regional and country levels. The Executive Director should call for modalities to extend the engagement and influence of the Reference Group to all UNAIDS Cosponsors, building on engagement to date with WHO, UNFPA and UNODC.