ISSUE PAPER FOR THE SESSION:

The New Global Fund Strategy and Its Human Rights Component

Background

Since it was created, the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) has been one of the leading vehicles for realizing the right to health and has recognized the importance of human rights in the context of efforts to address HIV, TB and malaria, including a focus on gender and equitable access to services and information. In support of global agreements, the Global Fund encourages an enabling policy and legal environment to ensure that all people benefit from HIV, TB and malaria programs and have access to justice in the context of the three diseases, regardless of health status, gender, sexual orientation, drug use or sex work. Although the Framework Document of the Global Fund does not explicitly refer to human rights, it takes a rights-based approach, stating that the Global Fund will support proposals which strengthen the participation of affected communities; give due priority to the most affected countries and communities; and aim to eliminate stigmatization of and discrimination against those infected and affected.

To address gaps in programs and services that became obvious over the years, in recent years the Global Fund developed improved guidance on the importance of including human rights and equity interventions in programs that it supports – with efforts focused at both the grant management and overall governance framework levels. Examples include adoption of the “Gender Equality Strategy” in 2008 and the “Sexual Orientation and Gender Identities Strategy” in 2009, both of which espouse human rights-centered approaches to the three diseases, and revised CCM guidelines adopted in May 2011 that explicitly refer to human rights and aim at creating a space where the most marginalized and discriminated can participate in country decision-making on the three diseases.

However, many gaps remain. Poor and inequitable targeting of programs, discriminatory social and legal environments, and human rights violations undermine the impact of Global Fund investments. Around the world, there are reports of funds not being allocated to appropriate interventions, a severe lack of services related to health and rights, and continued disregard for human rights. Often the Ministry of Health supports one set of policies and programs while other Ministries support conflicting policies and programs that undo efforts made in the health sphere. UNAIDS has recommended that national HIV responses include at least the following seven key programs to fight stigma and discrimination and increase access to justice, appropriately tailored to the national and local epidemic:

1. programmes to reduce stigma and discrimination;
2. programmes to sensitize law enforcement agents and law and policy makers;
3. HIV-related legal services;

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2 http://www.theglobalfund.org/documents/core/strategies/Core_GenderEquality_Strategy_en/
4. programmes to train health care workers in non-discrimination, confidentiality and informed consent;
5. programmes to monitor and reform laws, regulations and policies relating to HIV;
6. legal literacy programmes (such as “know your rights/laws” campaigns);
7. programmes to reduce harmful gender norms and violence against women and increase their legal, social and economic empowerment in the context of HIV. 

To date, these programmes have not been adequately included in Global Fund proposal submissions. Even where some of them have been included in proposal submissions, they have not always been adequately integrated into grant work plans, budgets or monitoring frameworks. UNAIDS considers vastly scaled up implementation of these programmes, as part of the so-called “critical enablers” that create an enabling environment to achieve maximum effectiveness of core programmatic activities, as fundamental to achieving a more targeted and strategic approach to investment in the HIV response. Programmes to protect and promote human rights in TB prevention and care have also been identified as a key objective of the WHO Stop TB Strategy, although they have not been as clearly defined and costed as they have been in the context of HIV.

In addition, there is considerable evidence that the Global Fund may be supporting programmes that are not only ineffective, but also directly or indirectly violate the human rights of the “programme beneficiaries”, such as programmes in compulsory detention centres for people who use drugs and sex workers, forced sterilisation of HIV-positive women, and imposing HIV testing as a condition to accessing any kind of health-related services, including services for TB and malaria. To date, the Fund has responded to such situations when they arise but has not developed clear policies and procedures by which do deal with such situations. Most recently, human rights issues have been included as a factor in the operational risk management framework that is currently being developed. Programmatic risk includes the risk of violating human rights or failing to address human rights issues that affect programme effectiveness.

New developments: The human rights component of the new Global Fund strategy

At its meeting in November 2011, the Global Fund Board adopted a new Global Fund strategy for the period 2012-2016. For the first time, the strategy has, as one of its

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five strategic objectives, a strategic objective to “promote and protect human rights”. The other strategic objectives are:

1. Invest more strategically in areas with high potential for impact and strong value for money, and fund based on countries’ national strategies (strategic objective 1);
2. Evolve the funding model to provide funding in a more proactive, flexible, predictable and effective way (strategic objective 2);
3. Actively support grant implementation success through more active grant management and better engagement with partners (strategic objective 3);
4. Sustains the gains, mobilize resources – by increasing the sustainability of supported programs and attracting additional funding from current and new sources (strategic objective 5).

The Strategy is the outcome of a process involving the development, testing and refinement of ideas throughout 2011, including through consultations with a diverse group of stakeholders. These consultations included one on human rights and most-at-risk populations, held in Geneva in August 2011, organized by the Global Fund Secretariat; as well as a meeting on “The Global Fund and Human Rights” organized by the Open Society Foundations, UNAIDS, UNDP and the Ford Foundation, held in New York in March 2011, in which several Reference Group members participated. The human rights component of the Global Fund Strategy was greatly influenced by the recommendations made at that meeting, as reflected in its meeting report,9 and by an earlier report on “Human Rights and the Global Fund to Fight AIDS, Tuberculosis and Malaria prepared by Joanne Csete for the Open Society Foundations and the Canadian HIV/AIDS Legal Network.10 Discussions at the 2011 Global Fund Partnership Forum helped to further refine and consolidate support for a strong human rights component in the new Global Fund Strategy.

The Strategy acknowledges that “human rights approaches increase the effectiveness, efficiency and sustainability of HIV/AIDS, tuberculosis and malaria programming”11 and that “[t]here is a broad consensus that the Global Fund can and should do more to explicitly promote rights-based approaches and proactively leverage its financing to advance human rights objectives in the context of the three diseases.”12 This is consistent with views of the Technical Review Panel (which reviews all funding proposals submitted to the Global Fund) which in its review of Round 10 proposals, said that it was “concerned with the limited inclusion in proposals of existing human rights instruments and measures to address stigma and discrimination.” At the same time, the Strategy notes that “there has been concern that the Global Fund not lose its focus on health; rather its efforts to address human rights challenges should come from evidence that they impede efforts to improve health and fight deadly epidemics”.13

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12 Ibid.
13 Ibid.
The Strategy includes three specific strategic actions in support of the human rights objective:

1. **Ensure that the Global Fund does not support programs or approaches that violate human rights, applying the principle of “due diligence”**.
   Work with partners to ensure there are suitable mechanisms in place to permit and encourage stakeholders to report any suspected violation of human rights in Global Fund-supported programs and define consequences for programs if such reports are substantiated. Work with partners to identify risks, including through the iterative, dialogue-based application approach, and proactively and systematically respond to human rights violations.

2. **Integrate human rights considerations throughout the grant cycle**
   Ensure that human rights principles – including non-discrimination, gender equality, participation, transparency and accountability – are integrated in all aspects of the Global Fund’s work. Define roles, responsibilities and capacity needs of all Global Fund structures and country-level stakeholders to operationalize these principles. Tailor existing policies and specific key performance indicators to ensure that human rights principles are promoted, communicated and upheld within the context of the three diseases.

3. **Increase investment in programs that address rights-related barriers to access (including those relating to gender inequality)**
   Encourage and support countries to increase programming that, based on evidence or lessons learned, will improve access to health services for affected communities and that create an enabling social and policy environment. These programs can be rolled out for any highly-affected group including women, young people, migrants, prisoners or most-at-risk populations. In the context of HIV, promote uptake of program areas identified by UNAIDS as critical enablers, many of which are also appropriate in the context of tuberculosis and malaria. Consideration could be given to providing incentives for countries to include rights-based programs that address barriers to access, and to a mechanism that would make funding directly available to civil society for advocacy and implementation of such programs.

More broadly, beyond the strategic objective on human rights, there is increasing recognition that greater attention to human rights related to the three diseases is closely linked with, and critical to the success of, other objectives of the Strategy. In particular, the focus in strategic objective 1 on value for money and maximizing the impact of investments by funding the right interventions, for the right people, in the right places, at the right price, is itself a rights-based approach. In addition, the evolution of the Global Fund funding model (strategic objective 2), by introducing a more iterative proposal development and grant negotiation process, should facilitate increased dialogue on human rights as well as the legal and social environment in countries applying for funding.

The Global Fund Secretariat has started planning for the implementation of the Strategy. Implementation of some strategic actions is expected to begin rapidly, while others – including the strategic actions in support of the human rights objective – will likely require further planning or design work before they are ready to be launched. Among other things, the Global Fund Secretariat is planning to recruit a Senior Human Rights Adviser; and UNDP, the UNAIDS Secretariat, Open Society Foundations, the Global Fund and others have started planning a consultation in Johannesburg on March 1–2, 2012 that will discuss how the Global Fund can bet put the strategic objective on human rights into action.
The broader context

As pointed out in the Strategy document, the

*Strategy comes at a crucial juncture in the lead-up to the 2015 Millennium Development Goals deadline. Promising new technologies and interventions are emerging and there is now a real opportunity to significantly alter the trajectory of the epidemics.*

At the same time, the adoption of the Strategy at the November 2011 Global Fund Board meeting coincided with the decision by the Global Fund Board – in recognition of current financial constraints – to focus on existing commitments and postpone the next funding opportunity until 2014, after the next replenishment.

2011 has been an exceptionally difficult year for the Global Fund. Some donor countries have cancelled or delayed their disbursements to the Global Fund, partly citing their own economic problems, but also citing the instances of fraud among certain grant implementers that the Fund’s Office of the Inspector General (OIG) has identified and that have become public because of the Fund’s exemplary transparency policy. Donors used to honour 100 percent of their pledges to the Global Fund. In 2010 this went down to below 80 percent. In 2011, the figure is lower still. The “confirmed pledges” that donors had said they would deliver during 2011 through 2013 have gone down from $9.7 billion to $8.2 billion, as a result of about $1 billion having been “un-confirmed” and about $0.5 billion now projected to arrive after 2013.

As a result, the Global Fund Board decided to cancel Round 11. The next funding opportunity will be under a new funding model that will be implemented by 2014. The Board also placed serious restrictions on accessing funding for grant renewals. A “Transitional Funding Mechanism” was established to cover the costs of “essential prevention, treatment and/or care” services in countries whose grants will expire and that were counting on Round 11. What constitutes “essential” services has not yet been defined. Unless new funding can be mobilised from donors, there will be no new funding opportunity until 2014 – hampering not only countries’ ability to continue scaling up treatment and prevention programmes, but also the possibility of increased investment in programs that address rights-related barriers to access.

Many health-related NGOs have been very critical of the decision to cancel Round 11, and a call to action has been organised by civil society activists, pointing out that the cancellation by the Global Fund of all new programming until 2014 will cost lives and cripple international efforts to deliver on health-related goals. The Call to Action demands that the Global Fund hold an emergency donor conference and issue a new call for proposals before the International AIDS Conference in July 2012.

In his speech at the opening session of the 16th International Conference on AIDS and Sexually Transmitted Infections in Africa (ICASA), UNAIDS Executive Director Michel Sidibé said that “the hopes of millions of people in Africa were put on hold with the Global Fund Board’s recent decision to postpone Round 11.” He called upon Ethiopian Prime Minister Meles "to convene a crisis meeting to assess the impact of the Global Fund’s decisions on African lives, and to coordinate Africa’s response." Previously, activists

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15 Ibid.
had been critical of Michel Sidibé’s 2011 World AIDS Message\textsuperscript{17} because it failed to even mention what many considered to the most pressing issue at the time of the release – the financial crisis at the Global Fund and its consequences for the lives of millions of people.

**Key issues for consideration by the Reference Group**

In many ways, the inclusion of a specific human rights objective in the new Global Fund strategy and the broader objective in the strategy to focus on funding the right interventions for the right people in the right places at the right place, have the potential to result in significant treatment, prevention and human rights benefits, including much greater inclusion of human rights programmes in national AIDS responses. While some of that potential may still be realized, because of the funding crisis facing the Global Fund (and the emphasis in the Global Fund’s Consolidated Transformation Plan\textsuperscript{18} on risk management, value for money and efficiency and effectiveness of programmes), implementation of at least some of the strategic actions under the human rights objective may be more challenging than anticipated. This implicates UNAIDS in at least two related ways: first, it has a direct impact on the success or failure of the UNAIDS strategy – the much greater focus on human rights in the Global Fund strategy is not only consistent with the direction of UNAIDS’ strategy in the response to HIV, but could enable the Global Fund to actively support the human rights and other strategies and priorities of the UNAIDS strategy; and second, as a technical partner to the Global Fund, UNAIDS has a role to play in ensuring the effective operationalization of the human rights components of the Fund’s new Strategy. Finally, it cannot be ignored that the Global Fund’s current funding crisis is itself a human rights issue of fundamental importance that all partners, including UNAIDS, ought to address.

Among the key issues for consideration by the Reference Group are:

- **Lack of adequate financial resources:** The lack of the financial resources needed to turn the epidemic around, both from national and international sources of funding, raises human rights issues. Should the Reference Group consider issuing a statement about countries’ national and international obligations and/or encourage UNAIDS to make such a statement?

- **Messaging:** At a time where many are expressing serious concern about the decreasing financial resources and, in particular, the cancellation of Round 11, UNAIDS and other UN organizations have continued conveying hopeful messages that the end of AIDS is in sight and failed to mention donors’ responsibility to contribute their fair share. Should the Reference Group make recommendations to the UNAIDS Executive Director, UNAIDS Secretariat, UNAIDS Reference Group on HIV and Human Rights

\textsuperscript{16}See, e.g. the letter by Gregg Gonsalves to Michel Sidibé (and Drs. Chan, Mundel, Bertozzi and Mr. Lake), in which he urges them “to stand up and speak out publicly about the cancellation of Round 11 and call on donor governments to come back to the table to ensure that new grants from the Fund can be embarked upon in 2012. This is a turning point for these three epidemics. Shutting off new grants from the Fund now is akin to pressing the stop button on the response to these diseases. Restarting efforts will be that more difficult if Round 11 is allowed to fail.” Posted on internationaltreatmentpreparedness@yahoogroups.com on 5 December 2011.

\textsuperscript{17}Michel Sidibé. 2011 World AIDS Day Message. Game changing year.

\textsuperscript{18}Available via http://www.theglobalfund.org/en/board/meetings/twentyfifth/. The Plan was adopted at the November 2011 Board meeting and includes all the reforms the Global Fund is committed to undertake to change “the Global Fund into a more efficient and effective organization”. 
and the UNAIDS family more broadly about appropriate messaging at this critical juncture in the response to HIV?

- **Implementation of the human rights objective**: What role, if any, can the Reference Group play in supporting implementation of each of the three elements of the human rights objective of the Global Fund strategy? What recommendations should the Reference Group be making to UNAIDS in this regard?

**Summary of the discussion at the thirteenth Reference Group meeting**

At the meeting, the Reference Group voiced strong support for the inclusion of a specific human rights objective and human rights activities in the new Global Fund strategy, especially at this critical juncture in the Fund’s history. According to the Reference Group, the inclusion of the specific human rights objective—and the broader objective in the strategy to focus on funding the right interventions for the right people in the right places at the right place—have the distinct potential to result in significant treatment, prevention and human rights benefits, including much greater inclusion of human rights programmes in national AIDS responses.

At the same time, the Reference Group was concerned that the funding crisis facing the Global Fund threatened to undermine human rights in two ways:

- **On a broad level**, by claiming that they do not have the money to fulfil their pledges to the Global Fund, donors are retrogressing in their obligation to progressively realize the right to health. They appear to also be implicitly rejecting the Global Fund model which created a multilateral response to HIV where recipient countries present how funds will be spent in an attempt to regain control again over how and where they spend their money. This means that much that was achieved in terms of aid effectiveness is jeopardized; donors not only reject that they have an obligation to provide international assistance as provided in human rights law, but they also reject the aspect of the global compact that supports self-determination of recipient governments.

- **On a narrower level**, less money for the Global Fund means that implementation of at least some of the strategic actions under the human rights objective will be threatened. For example, the emergency funding mechanism that was put in place to ensure continuity of essential services in the absence of Round 11 does not consider critical enablers as essential services. While the Reference Group recognizes that there is an urgent need to ensure that life-saving programmes are not cut, critical enablers are no less critical in the current resource-constrained environment, and cutting them creates a *de facto* triage whereby services are in fact interrupted for those who cannot gain access to them because of human rights violations.

The Reference Group decided to issue a statement, before the 10th anniversary of the Global Fund at the end of January 2012, about the Global Fund and the crisis of HIV funding, highlighting countries’ national and international obligations under human rights law to adequately fund the HIV response and addressing the funding crisis as a human rights issue.¹⁹

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The Reference Group was concerned about the fact that, at a time when many were expressing serious concerns about the decreasing financial resources and, in particular, the cancellation of Round 11, UNAIDS continued to convey hopeful messages that the end of AIDS was in sight. The Reference Group agreed that it is important to highlight countries’ own responsibility to progressively realize the right to health of their people, and welcomed the call by UNAIDS Executive Director Michel Sidibé to convene a crisis meeting to assess the impact of the Global Fund’s decisions on African lives and to coordinate Africa’s response. However, it was concerned that the Executive Director’s own statements and UNAIDS Secretariat messages more broadly failed to stress donors’ responsibility to contribute their fair share, which is not mutually exclusive with national obligations. Like many, the Reference Group strongly felt that there was an urgent need and obligation to continue to vastly scale up programming and, in particular, to vastly increase the number of people who can access HIV treatment. In part this can be done through reprogramming, in part it can be done by countries increasing their own contribution; but it cannot be done unless donors recognize their ongoing responsibility to provide adequate funding and to in fact increase this funding.

The Reference Group grappled not only with the response to the current crisis, but also with its source. Members felt that what underlies the problem is a lack of belief in the right to health on the part of both donors and recipient governments and a shift in donor philosophy from “aid effectiveness” to “investment.” As one put it, “we are not saying strong enough that we created a global compact and it is falling apart because of greed and power.” Related to this is a lack of outrage and social mobilization that drove the HIV response in the first place. Members described “a tolerance of a new wave of coming deaths” and “a growing lethargy in terms of the reality of people’s lives.” Members attributed this lack of outrage to poverty: “outrage comes from activists who can feed themselves and fight.” They called for clear messaging about the corruption of governments who could easily pay for ARV programmes on their own. On the basis of this discussion, the Reference Group resolved to issue a statement (see above) asserting a domestic and international obligation to realize the right to health.

Finally, the Reference Group discussed what role, if any, UNAIDS can play in supporting implementation of the three elements of the human rights objective of the Global Fund strategy. It appears that the degree to which the Secretariat country offices and the UN Joint Teams on AIDS help in the preparation of countries’ proposals to the Global Fund and their implementation is uneven across countries. This was a problem when there were enough resources, but it is an even greater problem now. The Reference Group therefore felt that, as some UNAIDS staff will be transferred from Geneva to countries, support to countries that are dependent on funding from the Global Fund for a large share of their HIV programming should be bolstered and assured.
Recommendations

1. It is urgent that the UNAIDS Executive Director and the staff of the Secretariat and Cosponsors become strong, vocal and consistent advocates for an increase of financial support to the global AIDS response, including the restoration and enhancement of funding to the Global Fund as an emergency. The continuation of the Global Fund’s work is absolutely essential to the realization of global and national goals in the HIV response, including little funded human rights objectives and programmes. Donors look to the leadership of UNAIDS for compelling reasons to support the Global Fund, and those reasons should be clear to all. The Reference Group urges the Executive Director of UNAIDS to speak publicly in human rights terms about the failure to support the Global Fund as a step backwards in the struggle for progressive realization of the right to health. He should also speak compellingly on the urgency of continued Global Fund support to rights-based HIV responses, even in the Transitional Funding Mechanism, including support to organizations of persons living with and at risk of HIV whose work is essential to the achievement of universal access to services.

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

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

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

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20 The recommendations are taken from the Reference Group’s statement, supra, with some minor modifications.
5. **States should reaffirm their shared responsibility to realize the human rights to health by adequately funding the HIV response.** The Reference Group stressed that the so-called “economic crisis” is actually a crisis of priorities, wherein billions continue to be diverted away from meeting basic needs, including life-saving health interventions. The massive gains in access to HIV prevention, treatment and care services made possible through the Global Fund will be jeopardized if high-income governments fail to live up to their pledges, delay payment of the pledges, and/or fail to commit to increased funding for the Global Fund. Recipient governments must likewise increase their own domestic spending for HIV programmes and honour their commitments to increase general health spending, a fundamental human rights obligation of all States.

This issue paper was prepared by the Reference Group Secretariat to facilitate discussion at the Reference Group’s December 2011 meeting. It was revised after the meeting to include a summary of the discussion at the meeting and the Reference Group recommendations.