In the context of the funding crisis “critical enablers” should not suddenly become less “critical” than other elements of the investment framework, both in the proposed allocations of financial support they will receive and in their strategic centrality.

Background

In a paper published in *The Lancet* just before the 2011 UN High Level Meeting on AIDS, Bernard Schwartländer, Director: Evidence, Strategy and Results at UNAIDS, and colleagues argued that substantial changes are needed to achieve a more targeted and strategic approach to investment in the response to the HIV/AIDS epidemic. The paper pointed out that, until 2011, advocacy for resources had been done on the basis of a commodity approach that encouraged scaling up of numerous strategies in parallel, irrespective of their relative effects. It argued that a shift towards focused investments in the global AIDS response could enable countries to make more rapid progress in stopping new infections and keeping people alive. It proposed a “strategic investment framework” with three categories of investment, consisting of:

- six basic programmatic activities:
  - providing antiretroviral therapy for people living with HIV and treating opportunistic infections;
  - treatment for prevention: providing antiretroviral therapy for preventing HIV transmission among discordant couples;
  - providing HIV prevention services for women and girls who are pregnant;
  - implementing behaviour change programmes, including condom promotion;
  - carrying out male circumcision (in countries with high HIV prevalence and low rates of circumcision); and
  - focusing outreach on people at higher risk: people who inject drugs, sex workers and their clients and men who have sex with men;
- interventions that create an enabling environment to achieve maximum effectiveness (so-called “critical enablers”), including community mobilization, law reform, legal services and other efforts whereby civil society, including people living with and at risk of HIV, can take the lead in engaging with HIV programmes in ways that protect both their rights and their health; and
- programmatic efforts in other health and development sectors related to HIV/AIDS (so-called “development synergies”).

---

The Political Declaration emerging from the High Level Meeting called on all United Nations Member States to redouble their efforts to achieve universal access to HIV prevention, treatment, care and support by 2015 and outlined a series of new targets towards achieving this goal. Member States pledged to work through “shared responsibility and by increasing national ownership of AIDS responses” towards closing the resource gap for AIDS, and towards increasing funding to US$ 22–24 billion per year by 2015 (see issue paper 2 for a discussion of human rights considerations related to “shared responsibility” for the AIDS response). The Declaration posited that closing the funding gap could be achieved, among other things, through “greater strategic investment”: strategic allocation of HIV resources towards activities that result in the maximum number of infections averted and lives saved. In turn, this would increase the likelihood of mobilizing the additional resources required to fill the funding gap, since it would help stakeholders demonstrate that programmes are implemented efficiently.

In its new Strategy for 2012–2016, the Global Fund to Fight AIDS, Tuberculosis and Malaria adopted the strategic investment approach, making “investing more strategically” the first objective of the Strategy. Specifically, the Strategy says that, “[t]o make the most of the funds and maximize impact and value for money, Global Fund resources must be invested more strategically.” To achieve this, the Global Fund decided to “focus on the highest-impact countries, interventions and populations while keeping the Global Fund global.”

At its thirteenth meeting in December 2011, the Reference Group supported the inclusion of this objective in the Strategy, stating that – together with the specific human rights objective and human rights activities in the Strategy – it had the distinct potential to result in significant treatment, prevention and human rights benefits. At the same time, the Reference Group was extremely concerned about the November 2011 announcement of the cancellation of the 11th round of funding of the Global Fund. In a statement released after its meeting, the Reference Group said that the cancellation “presents the international community with both a health and a human rights crisis.” It was concerned that the funding crisis facing the Global Fund threatened to undermine human rights, including because the emergency funding mechanism that was put in place to ensure continuity of essential services in the absence of Round 11 did not consider critical enablers as essential services. While the Reference Group recognized that there was an urgent need to ensure that life-saving programmes would not be cut, it pointed out that critical enablers are no less critical in the resource-constrained environment, and that cutting them would create a de facto triage whereby services would in fact be interrupted for those who cannot gain access to them because of human rights violations. The Reference Group asserted that in the context of the funding crisis “critical enablers” should not suddenly become less “critical” than other elements of the investment framework, both in the proposed allocations of financial support they would receive and in their strategic centrality.

---

4 THE GLOBAL FUND STRATEGY 2012-2016: INVESTING FOR IMPACT.
Since then, in early 2012, UNAIDS produced Investing for results. Results for people\textsuperscript{6} to “help countries make decisions about how to allocate resources in the AIDS response. The document aims to help guide “investment priorities that are cost-effective, efficient and produce maximum impact,”\textsuperscript{7} by ensuring countries respond to HIV in a manner that is optimal to the national and local context and their unique epidemic patterns; help countries select interventions that will have the highest impact; and, set priorities in resource allocation in accordance with national objectives to curb the epidemic.

The links between basic programmes and critical enablers and synergies have been explored in detail by an interagency working group drawn together by the UNDP to develop guidance on HIV investments for critical enablers and synergies with other sectors. The working group produced Understanding and Acting on Critical Enablers and Development Synergies for Strategic Investments, which includes country examples that illustrate how basic programmes have been strengthened through support to critical enablers.\textsuperscript{8}

The document states that “[c]ritical enablers and development synergies are essential in national AIDS responses for five main reasons. They:

- support and increase the effectiveness, efficiency, equity and reach of basic programme activities;
- can act directly to reduce (or exacerbate) risk to HIV;
- can help to protect and promote human rights and human rights principles: participation, accountability, inclusion, non-discrimination and informed consent;
- can result in a multitude of positive development and health outcomes across the Millennium Development Goals; and
- encourage the sustainability of national AIDS responses.\textsuperscript{9}

It further states that “[h]uman rights and gender equality are essential considerations across the Investment Framework” and that “[e]ach basic programme activity has gender and rights dimensions that must be understood and incorporated into design and delivery. At the same time, it affirms that certain kinds of focused action on gender equality and on human rights are ‘critical enablers’ for the HIV response, while other kinds of work on rights and gender contribute to many outcomes, including some related to HIV: they are the so-called “development synergies.” It specifies that the purpose of the document is not to “focus on the overall gender or rights dimensions of the Investment Framework,” but instead to discuss how these principles fit into the specific ideas of enablers and synergies.” The document continues by saying that UNAIDS would produce separate discussion and guidance materials on gender and rights dimensions of the Investment Framework and implementation of investment thinking.\textsuperscript{10}

Also in 2012, UNAIDS organized two consultations to describe the Investment Framework to community-based advocates and service providers and get input from them about what further information is needed to strengthen the Framework as well

\textsuperscript{7} Ibid, at 2.
\textsuperscript{9} Ibid, at 7.
\textsuperscript{10} Ibid, at 2.
as recommend strategies for application of the Framework at country levels. These recommendations include:

- Both human rights and community mobilization underpin the entire model and should be considered basic programme activities.
- Within any context, human rights based approaches and actions to ensure human rights are not optional. They must not be seen as discretionary or context specific. For concentrated epidemics, human rights and community mobilization are even more important and should be part of the main programme activities as well as critical enablers.
- Community mobilization should be intrinsic to the investment approach. Community mobilization is more than outreach, patient support and referral. There is an urgent need to provide guidance on what community mobilisation means and how to ensure appropriate levels and quality in the application of investment approaches.
- Responses to concentrated epidemics focus mainly on key affected populations and the structural changes that are required for effective programme delivery. Legal reform must be at the centre of the response in countries with concentrated epidemics. Recognizing the rights of key populations will translate to improved health care for people who use drugs, sex workers, MSM, transgender people and people living with HIV.

Issues discussed at the December 2012 Reference Group meeting

At its 13th meeting in December 2012, Reference Group were concerned that, in the context of the current funding crisis, “critical enablers” will be seen as less “critical” than other elements of the Investment Framework, both in the proposed allocations of financial support they will receive and in their strategic centrality, trivializing the lessons learnt over three decades about the need for human rights protections to be central and integral to HIV responses. They welcomed the efforts of the interagency working group convened by UNDP to explore the links between basic programmes and critical enablers and synergies, as well as the development of the paper on “Understanding and Acting on Critical Enablers and Development Synergies for Strategic Investment.” They were particularly pleased that the document includes an explicit commitment by UNAIDS to produce separate discussion and guidance materials on the gender and rights dimensions of the investment approach and implementation of investment thinking. Members strongly emphasized the importance of human rights and the need to understand them as an element of best practices, a measure of quality, and an indispensable principle for how programmes and interventions should be structured.

Reference Group members agreed that it would be helpful to gather additional evidence that human rights interventions are not only the right thing to do, but also help achieve better results. However, they pointed out that, in most cases, it is unlikely that governments will be moved by evidence to change policies that reflect deeply held prejudices. They expressed a wish to collaborate closely with the UNAIDS Global HIV Monitoring and Evaluation Reference Group (MERG), such as by defining together what kind of data and evidence should be collected.

Finally, members noted that, while UNAIDS has been successful in defining and positioning human rights as critical enablers, it should be borne in mind that human rights go beyond the set of seven rights-based programmes that UNAIDS has articulated, as well as the other critical enablers being posited. Human rights are a set of fundamental principles and binding commitments, a framework for accountability, and “a language that is empowering and resonant with communities”. Reference Group members emphasized the need to be clear about what is meant when we say that we need more evidence of the impact of human rights-based approaches. We may need evidence of the *health impacts* of certain programmes if we argue they should be funded using health funding, but we should emphasize that there are many other reasons related to human rights goals and protections, beyond health, why these programmes could and should be funded.

Reference Group members noted that the *Declaration of Commitment* and subsequent unanimous declarations of the General Assembly assert that a commitment to human dignity in the response to HIV is of incontrovertible importance, independent of considerations of programme efficiency, concluding that it would be a great step backward for the Investment Framework to promote the idea that economics and efficiency trump human dignity and rights. It would also be a distortion of the integral link between HIV, human rights and health which the Reference Group views as part of the origin and legacy of UNAIDS.

In response to those who demand “evidence” to support critical enabler programming, Reference Group members emphasized that programmes need to be demand-driven and designed by and with full involvement of people living with HIV as well as members of other key populations. In addition, as there is pressure to demonstrate results and value for money of interventions, much more needs to happen to capture and report on the positive impacts of critical enabler programming, with a view to inspiring more action and investment. In this context, the Reference Group highlighted the need to expand the definition of “evidence” and to place explicit value on human rights outcomes, quality of services, and the qualitative experiences of people living with HIV and members of key populations.

The Reference Group expressed that it would be happy to assist UNAIDS (and the Global Fund) in developing any further guidance on critical enablers, in a way that underscores what history has proven to be the crucial place of human rights in AIDS programmes at any resource level and with any level of linkages to other priorities.

**Recommendations**

2.1 The investment approach, in the implementation of its three aspects (basic programmes, critical enablers and development synergies) should adhere to a rights-based approach, as indicated in the original Lancet article on the subject. This should be spelled out in concrete terms in all documents relating to the investment approach.

2.2 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 for protecting, promoting and respecting the human rights of people tested and treated for HIV and those in prevention programmes. Rights-related
critical enablers should not be seen as discretionary or context-specific; rather, they are indeed critical firstly to ensure that human rights are protected and respected in the context of HIV and secondly to enable basic programmes to achieve health.

2.3 The UNAIDS Executive Director and other UNAIDS and co-sponsor leaders should state clearly that “faster, better and smarter” results in the global response are impossible without strong financial and political support for 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).

2.4 Discussion of critical enablers should be much more specific in describing the nature and content of the programmes, particularly with regard to the specific programmes that UNAIDS has identified as key programmes for supporting human rights and which the 2011 Political Declaration on HIV/AIDS enumerates.

2.5 UNAIDS should make a strong statement that the implementation of the investment approach must be inherently and at all times a rights-based approach — not just when the national authority determines that human rights measures are warranted in the particular package of “critical enablers” because of the way the national epidemic is understood by those in power. That is, centring policies and programmes on human rights always makes them more respectful, more effective and more sustainable. If UNAIDS (or the Global Fund) sends a message that this is not the case, ground will be lost. The case has also been made by UNAIDS that key human rights measures — enabling people to know their rights and gain access to legal services, reducing gender-based violence, reducing stigma, reforming unjust laws, helping health workers and police to work in human rights-centred ways — are central determinants of the effectiveness of HIV responses.

This issue paper was prepared by the Reference Group Secretariat to facilitate discussion at the Reference Group’s December 2012 meeting. It was revised after the meeting to include a summary of the discussion at the meeting and the Reference Group recommendations.