

Recommendations Brief to Michel Sidibe UNAIDS Executive Director

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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 do not necessarily reflect the views of the UNAIDS Secretariat or any of the UNAIDS Cosponsors.

Context

Now more than ever, greater attention to human rights is essential to an effective response to HIV, including attaining universal access to prevention, treatment, care and support. It is also essential to the policies, expenditures and programmes of the UNAIDS Programme

On paper, the place of human rights in the response to HIV is well established. Under the leadership of Jonathan Mann and Peter Piot, WHO's Global Programme on AIDS and the Joint United Nations Programme on HIV/AIDS (UNAIDS) have highlighted the essential role of human rights in the response. However, for many reasons, now more than ever, the UNAIDS Executive Director and UNAIDS need to devote even greater attention to human rights in the response to HIV. Such increased attention is necessary to attain universal access to HIV prevention, treatment, care and support, itself a human rights imperative.

1. There are dangerous trends to “remedicalize” the response to HIV by focusing on biomedical “quick fixes” and neglecting structural issues such as human rights and gender. Such trends fail to acknowledge that AIDS often derives from and generates social inequalities, gender inequality, stigma and discrimination and other human rights abuses.
2. There are calls suggesting that limited HIV funds be reallocated from “multi-sectoral responses” towards strengthening health systems. Such calls fail to balance (a) the imperative to scale-up medical and health-systems responses as part of the right to the highest attainable standard of health with (b) 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 and comprises a universal framework that emphasizes the inherent dignity of all persons and the mutuality and necessity of ensuring the right to treatment and health care services, together with the need to simultaneously address the social, economic and legal determinants of HIV.
3. In the context of the current global financial crisis, there is a real risk that the resource commitment to achieving universal access to HIV prevention, treatment, care and support will wane, and that the expansion and sustainability of treatment and care may be brought into question. As other major global issues, including the current food crisis that disproportionately impacts on populations affected by HIV, will be competing with HIV for political commitment and funding, it becomes even more imperative to ensure that resources to address HIV are spent both effectively AND equitably.
4. Increasingly, countries are passing punitive laws that seek to “deter” or “enforce” certain behaviours (e.g. HIV transmission, disclosure of HIV status respectively). Such laws will not prevent new infections or

reduce vulnerability to HIV, and they will negatively impact upon both public health and human rights. At the same time, many countries fail to pass and/or enforce laws that would protect women from gender inequality and sexual violence; protect people living with HIV from discrimination; decriminalize key populations at risk and protect them from discrimination and violence; remove barriers to provision of comprehensive and evidence-informed HIV prevention, treatment, care and support; and support access to essential medicines.

5. National responses to HIV continue to fail to deal with the drivers of the epidemic or with the populations most affected by HIV infection and its impacts. In particular, they fail to:
 - a. Address the actionable intersections between vulnerability to HIV infection and impact; and the legal, social, and political forces that drive such vulnerabilities
 - b. Address the controversial issues at the heart of the epidemic, including gender inequality, violence against women, harmful male gender norms, age disparate sex and underage sex, sex out of marriage, sexual violence in relationships and marriage, sex work, same sex sex, drug use, stigma and discrimination, marginalization and criminalization of populations at risk
 - c. 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, as well as criminalised and marginalised populations that often face major barriers to accessing HIV prevention, treatment, care and support: people who use drugs, sex workers, men who have sex with men and prisoners

Therefore, the UNAIDS Programme's capacity and commitment to address human rights must be strengthened.

A major aspect of the strength of UNAIDS, under the leadership of the UNAIDS Secretariat, has been its promotion of the protection and fulfilment of human rights in the response to HIV – consistently embracing the importance of human rights, standing by and supporting those affected, challenging the inequities at the heart of the epidemic, and speaking out on behalf of the most marginalized.

Because of all the factors described above with regard to the current context, the UNAIDS Programme must continue, 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. UNAIDS must be an “activist” programme within the United Nations, expressing enduring and real commitment to human rights, training its staff on human rights, rewarding them for being strong on human rights issues and programmatic responses, and displaying leadership on human rights at all levels, including at regional and country levels. 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

1. The commitment to human rights and rights-based responses to HIV throughout the UNAIDS Programme should be strengthened and made more explicit.

The UNAIDS Executive Director should increase his 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 and evidence-informed approaches to HIV by the Executive Director early in his tenure based on and extending beyond the *International Guidelines on HIV/AIDS and Human Rights* (2006 Consolidated version)
- b. the inclusion of human rights issues in all speeches and missions by the Executive Director, including visiting organizations representing vulnerable groups and working on human rights responses to HIV
- c. the development by the Executive Director, with the support of UNDP, of a costed 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

- d. 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
- e. undertaking a number of initiatives to ensure that human rights (as well as, gender and GIPA) remain corporate and cross-cutting priorities, and that the UNAIDS commitment to these priorities is intensified and elaborated, among other things by:
 - developing a comprehensive strategy by which to ensure that the commitment to these priorities is understood, rewarded and measured throughout the Programme
 - reviewing programme capacities and resources on these three corporate priorities
 - developing 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
 - reviewing the placement of human rights, gender and GIPA in the UNAIDS 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
 - regularly speaking out against HIV-related human rights violations.

2. Technical capacity and financial support for programmatic responses supporting human rights in national HIV responses should be greatly expanded.

The Executive Director should ensure that there is increased commitment to the funding, planning, implementation, monitoring and evaluation of programmatic responses supporting human rights 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.¹ The need for this is underscored by the fact that governments frequently express commitment for rights-based responses to HIV without translating this commitment into programmatic action.

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 (as well as gender and GIPA), and on law, law enforcement and access to justice related to HIV.

¹ These programmes include the following: “know your rights” and laws campaigns; 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; programmes to ensure adequate training in non-discrimination, informed consent and confidentiality for health care workers; programmes to ensure adequate training/sensitization of police and judges in non-discrimination, non-violence and addressing violence against women; 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; 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; programmes to change harmful gender norms that make men, women and young people vulnerable to HIV infection; programmes to address the sexual violence and coercion that place girls and women at risk of HIV infection; programmes to ensure urgent and sufficient attention to the provision of paediatric antiretroviral therapy; programmes to ensure adequate support for orphans and vulnerable children and caregivers; 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.

The Executive Director should call for the development of a strategy by which to engage bilaterals and funding agencies and modalities to provide greatly 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.

3. Staff training on human rights, as well as enabling staff to assist countries in the development of a supportive legal environment, should be a major priority.

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 staff of the Cosponsors working on HIV should be an urgent priority. This training should include a commitment to the promotion of rights-based approaches to HIV,² and to empower and support UN system staff to exercise the “human rights challenge function” where governments, the international community and donors fail to respond to the needs of those living with and most affected by HIV with sufficient political attention, resources, programming, and where individual cases of human rights violations occur in the context of the response to HIV. The training should also include training on effective strategies to support an enabling legal environment.

Staff throughout the Programme, as appropriate, should understand that work with Parliaments, Ministries of Justice, Interior and Migration, the police, and the judiciary is essential to ensure that the legal environment is one that enables an effective, rights-based and equitable response to HIV at the national level, particularly for all those most vulnerable to infection and most affected by HIV and AIDS.

4. Expanded commitment, resources, capacity and action are needed for the promotion of gender equality and the greater involvement of people living with and affected by HIV.

The Executive Director should ensure that a major and urgent priority of the UNAIDS Programme is to shift political attention, resources and programming to the vulnerabilities and needs of women and girls. This requires more funding for and implementation of a much wider range of programmes to support women and girls, including programmes to protect women from infection in marriage; empower women in households affected by HIV; keep girls in schools; empower women/girls to refuse sex, practice safer sex and/or use condoms; promote greater accessibility and affordability of the next generation of female condoms; ensure that women can benefit from equality in inheritance and property rights; and 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. In addition, the vulnerabilities and needs of men who have sex with men and transgender persons, as well as men and boys more broadly and, where appropriate, lesbians and bisexuals, also need greater attention, resources, and programming. This includes: scaling up appropriate HIV prevention, treatment, care and support services for men who have sex with men and transgender people; supporting efforts to repeal laws that criminalise sodomy or sex between men or between women, which are a serious barrier to an effective HIV response; and developing and integrating efforts to challenge the impact of harmful gender norms on men and boys as well as women and girls, in the context of their potential vulnerability to HIV.

² Rights-based approaches to HIV 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.

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 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 needs of organizations of people living with HIV, recognizing that they are often under-resourced and over-stretched and that greater involvement of people living with HIV and advocacy by them must be adequately supported.

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.

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

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

- a. ensure that efforts are increased to empower individuals and communities to know their rights and be able to demand them; 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
- b. resist calls to medicalise and/or reduce the response to single sector
- c. rather, as part of an intensified commitment to a rights-based response, seek to develop a strategy to reenergize the roles, commitments, and comparative advantages of the Cosponsors and Secretariat; and ensure that his 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
- d. call for the development of clearer systems of accountability for the Secretariat and Cosponsors in the programme, as well as for key sectors at country level, to support this multisectoral response
- e. 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 and should 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
- f. 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.

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

The Executive Director should continue and intensify his 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 and a fundamental component of achieving several of the Millennium Development Goals. As part of this commitment, the Executive Director should:

- a. ensure that the UNAIDS Secretariat more clearly delineates 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
- b. push for equitable access to prevention, treatment, care and support by marginalised communities (including sex workers, men who have sex with men, people who use drugs and prisoners)
- c. 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 marginalised populations) making this area also one of programmatic obligation comparable to prevention, treatment, care and support
- d. 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
- e. 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 marginalised populations are in place and adequately enforced; laws and law enforcement practices that create barriers to HIV prevention, treatment, care and support have been removed
- f. call for the reform of national intellectual property laws to ensure that public health related TRIPS flexibilities are fully incorporated into domestic legislation.

7. The UNAIDS Secretariat should support an intensified and rights-based focus on HIV prevention.

While maintaining the full commitment to achieving universal and sustainable access to HIV 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. In particular, he should:

- a. call for enhanced focus and articulation of prevention programmes to address structural vulnerabilities of HIV, necessitating the engagement of the entire UN system, in particular the Cosponsors of UNAIDS
- b. call on the UNAIDS programme to develop modalities by which to ensure that all groups that need access to HIV prevention measures and services receive them³
- c. ensure that “combination prevention” is promoted and that it includes greater attention to the legal, social and political barriers to the roll out of HIV prevention, in particular, the criminalised or highly marginalised status of most at risk populations and the high levels of stigma and discrimination against people living with HIV
- d. ensure that “combination prevention” also includes sufficient attention to effective social mobilisation and

³ Including women in long-term relationships; young people, particularly young women in age-discordant relationships; men and women in multiple concurrent partnerships; sex workers and their clients; men who have sex with men; people who use drugs; people in closed settings, including prisons, pre-trial and other detention centres, and forced drug treatment centres; and mobile populations.

social change communications strategies to create demand for prevention, including a call for the “right to prevention”

- e. ensure that prevention efforts include a 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.

8. Increasing the capacity within the UNAIDS programme for dedicated and strategic work on human rights is essential.

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 UNDP and the UNAIDS Secretariat bring different strengths to the area of human rights and 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. With regard to the inherent human rights mandates of the other agencies in the programme, more attention should be given to efforts to bring together all the human rights and gender equality efforts of the Programme into a coherent strategy – a key role for UNDP in its lead role on human rights and gender in the Programme.

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

The Executive Director should 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.

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

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.