



UNAIDS Reference Group on HIV and Human Rights

February 14, 2017

Ms. Awa Coll-Seck & Mr. Lennarth Hjelmåker
Co-Chairs, UNAIDS Global Review Panel

Dear Co-Chairs:

Re: Global Review on the Future of the UNAIDS Joint Programme Model

On behalf of the [UNAIDS Reference Group on HIV and Human Rights](#), we are pleased to respond to your recent call for recommendations on making the Joint Programme *sustainable* and *fit for purpose*.

The Reference Group was established in 2002 to advise the Joint Programme on all matters relating to HIV and human rights. A body of individual experts drawn from all regions of the world, 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. The Reference Group advises UNAIDS on how it can strengthen the capacity of governments, civil society and the private sector to protect and promote human rights in relation to HIV, and how it can best operationalize human rights and the principle of GIPA (Greater Involvement of People Living with HIV or AIDS) in UNAIDS' policies and technical support.

The Global Review Panel has convened at a critical time in the AIDS response. We have the scientific tools to achieve the goals of zero new HIV cases, zero AIDS deaths and zero discrimination, but it is critical that we marshal the political commitment and necessary resources. We believe that the key role for UNAIDS is to be a leader in generating that political will, and to monitor the epidemic to ensure that the ambitious goals are achieved and that, consistent with the Sustainable Development Goals, “no one is left behind.”

To that end, the Reference Group wishes to underscore to the Panel the critical importance of defending and promoting human rights in the response to HIV. UN Member States themselves have repeatedly declared in every Political Declaration on the matter that the full realization of human rights for all “is an essential element in the global response to the HIV epidemic, including in the areas of prevention, treatment, care and support.” However, defending and promoting human rights is not merely an obligation of UN Member States and agencies. Experience has taught us that this is also an essential strategy in the HIV response—practical, life-saving and economical.

There is abundant evidence that the abuse of human rights continues to fuel new infections among women and girls, among young people, and among various “key populations” such as people who use drugs, sex workers, gay men and other men who have sex with men, transgender people, and prisoners and other detainees. There is also ample evidence that measures to respect, protect and fulfil the human rights of people living with HIV and of key populations most affected are beneficial, including in advancing HIV prevention and treatment efforts. Rigorous evaluations from many countries have shown that concerted action to reduce HIV-related stigma, to improve health workers' ability to interact respectfully with people living with HIV or from key HIV-affected populations, to modify abusive policing of people living with or at risk of HIV, and to reduce gender-based violence can all dramatically increase

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the effectiveness and reach of HIV prevention and treatment programs. To take but one example: a large body of research on sex worker collectives in South Asia shows that persons living with or at risk of HIV, even when they are socially marginalized, can organize HIV services and information for themselves and reduce stigma and other abuses in the community. It is well documented across the world that meaningful participation of people most affected by HIV is essential for effective HIV programmes.

In fact, a key lesson from the HIV epidemic—albeit one not yet consistently and universally recognized—is that an effective response must encompass more than just the development and deployment of biomedical interventions, essential as those are. A more comprehensive model is emerging for the HIV response—one that understands and addresses social and structural drivers of risk, infection, illness and death as questions not only of public health but of human rights. The Joint Programme has played, and must play, an important role in articulating the need for this broader, rights-based approach and in defining what it means for policy and practice. (The lessons from the HIV epidemic are now also informing the evolution of responses to certain other major global health challenges, such as efforts to develop rights-based strategies for the tuberculosis response.)

Without respecting, protecting and fulfilling the human rights of people living with HIV and of key populations particularly affected by the epidemic, we will simply not be able to achieve the Sustainable Development Goal of ending AIDS by 2030. We therefore recommend that, in its final report, the Panel reaffirm explicitly the fundamental importance of human rights to an effective HIV response. The Panel should also keep this foundational principle in mind as it formulates recommendations with respect to each of the three themes being explored by the Panel — namely, the joint working of UNAIDS, its governance, and the questions of financing and accountability.

The Reference Group also wishes to offer more specific observations with respect to each of these themes, as set out below.

THEME 1: JOINT WORKING

- **Emphasizing human rights in prioritization:** The Reference Group is encouraged that at its first meeting, the Review Panel has already taken note of concerns that human rights issues could end up getting deprioritized in the work of the Joint Programme if care is not taken to avoid this outcome. We recognize that these issues can be particularly challenging, not least because of resistance by Member States and others, but this is precisely why it is essential that the UN system include a mechanism such as the Joint Programme for addressing them. Protecting and promoting human rights must be central to the work of the Joint Programme, as a few examples illustrate:
 - The need to protect the rights of *young people* is underscored by alarming HIV prevalence and incidence among adolescents, in particular girls in sub-Saharan Africa. Sexual and physical violence, as well as denial of access to health information and services (including comprehensive information and services for sexual health) and the denial of access to education more generally, are among the human rights violations contributing to this situation.
 - Stigma and discrimination can and do kill. Governments may refuse to recognize the existence of *key populations* affected by HIV or to fund the evidence-based services needed to address HIV in those populations. Fear of discrimination, violence or other human rights violations is a

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barrier to people seeking health services, including HIV testing and treatment. Gender discrimination and inequality—including in severe forms such as gender-based violence—can put *women and girls* at greater risk of infection, and doubly disadvantage women and girls living with HIV, including impeding their access and adherence to treatment.

- But it is not adequate to consider that a “human rights approach” to HIV starts and ends with expressing concern about and challenging stigma and discrimination. The *criminalization of key populations and other punitive measures*—such as abusive policing practices or the compulsory detention of sex workers and of people who use drugs for ostensible “treatment” or “rehabilitation”—have been and remain central obstacles to overcoming AIDS (and other conditions such as tuberculosis and hepatitis C). Punishing drug use through “wars on drugs” and incarceration of people who use drugs is an inappropriate and rights-violating response to a public health challenge. By creating and exacerbating conditions of risk associated with some drug use, it does far more to fuel HIV than drug use itself. Addressing HIV also requires confronting in a completely non-judgmental manner sex outside the context of traditional heterosexual marriage, including sex between men, sex between young people, or sex in exchange for money or other goods. So-called “culture wars” may persist in relation to sex and sexuality, but they must not distract from the central task of ensuring sufficient coverage, uptake and adherence of HIV and other health services for key populations and HIV-affected women and girls. As an urgent priority, governments must address violence and discrimination against sex workers, gay and other men who have sex with men (GMSM) and transgender people, including illegal police practices such as harassment, extortion, arbitrary arrest, and rape committed in the course of enforcing laws and harmful social norms against prostitution, sex between men (or between women), or vaguely defined (and selectively enforced) acts of “indecentcy.”
- Similarly, not only does criminalization lead to the over-incarceration of key populations, the denial of human rights of *prisoners and other detainees*— including denial of the right to health services equivalent to those available outside prison — has also fueled new infections with HIV (as well as TB and viral hepatitis) within this “key population” and has undermined access to treatment for those living with HIV.
- Achieving the goal of *universal access to HIV treatment*—a human rights obligation as well as a public health objective—has relied, and continues to rely, heavily on generic competition to lower the price of medicines, which often requires States to make use of flexibilities in intellectual property law, including as that law is shaped by international agreements, such as the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and other regional or bilateral agreements. The HIV epidemic, and the global mobilization in response to the urgent need for life-saving medicines to treat millions of people, have illustrated starkly the critical importance of ensuring countries have the ability to devise policies, including in the areas of intellectual property, investment, procurement, competition, and price regulation, to address public health needs. This effort will continue to be needed, with the same combination of urgency, human rights advocacy and political will that drove the first era of the HIV response.

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This cursory review of some key human rights challenges should underscore the reality that the “fast-track” approach will fail to achieve the internationally agreed targets for ending AIDS unless it attends to these and other human rights barriers to scaling up HIV prevention, testing and treatment. Human rights are “critical enablers” of an effective HIV response. The benefits of scientific advancement in the field of HIV—including the development of effective treatments that save lives and communities, and also boost prevention efforts—will go unrealized as long as people and communities do not know or cannot claim their rights, and as long as laws, policies and practices continue to deny or violate rights. The Panel should set out this understanding clearly and firmly in its report, as a touchstone for both its recommendations and for a new model for the Joint Programme. If UNAIDS is to be fit for purpose, its mandate must include addressing these human rights dimensions of the epidemic.

- **Structure of Joint Programme creates flexibility and opportunities, including for advancing human rights:** One of the strengths of the Joint Programme is that its multi-faceted, multi-layered structure can enable attention to human rights where a single entity might find it more challenging. For example, while it is certainly a role and responsibility for the UN Resident Coordinator to raise HIV and related human rights issues at country level — and this should be reflected in their accountability for performance — the reality is that such a coordinator will often face multiple competing considerations at play in the UN’s engagement at country level, and this may create some constraints in raising certain sensitive human rights issues. However, the UNAIDS Secretariat and/or certain co-sponsors may be in a position to raise those concerns with fewer constraints. That said, staff in the field may face repercussions for doing so. The Reference Group has stressed several times to the UNAIDS Executive Director that Secretariat and co-sponsor field staff who defend and advocate for human rights must be assured by their senior management that they will be protected by the UN (e.g., not losing their employment) even if they are sanctioned or expelled by the government of the country in question. If advancing human rights in the HIV response is understood and stated as a clear role for the Joint Programme, as it should be, then it must also be a clear feature of the Joint Programme model that such institutional support exists for staff who act in accordance with this mandate and expectation.
- **Engaging UN entities outside Joint Programme:** The UNAIDS Secretariat has developed an ongoing partnership with the Office of the UN High Commissioner for Human Rights (OHCHR), an entity outside the Joint Programme. Among other things, this collaboration has in the past produced the *International Guidelines on HIV/AIDS and Human Rights* (subsequently updated and reissued), which has been an important tool for advancing human rights–based responses to HIV, including at country level. Furthermore, the Joint Programme (both Secretariat and co-sponsors) has a vital collaboration with the Global Fund to Fight AIDS, Tuberculosis and Malaria, including supporting its efforts to scale-up intensively programming on human rights and gender barriers. We note that the Review Panel has before it the question of more systematic engagement of UN entities outside the Joint Programme; in keeping with our point about the critical importance of human rights efforts in the response, we thought it worthwhile to note these examples of productive collaborations that can bring additional attention to bear on the human rights challenges of the HIV response, both at country level and in international fora.
- **Strengthening human rights capacity and competency within the Joint Programme:** It was noted already at the Review Panel’s first meeting that, when the right capacities are in place, including at

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country level, UNAIDS can help catalyze positive change, including on sensitive issues such as human rights. The UNAIDS Secretariat and country offices also play key roles in addressing urgent situations affecting HIV, be they imminent or ongoing human rights violations or humanitarian crises leading to interruptions in services and care. However, the Reference Group is concerned that, despite the centrality of human rights to an effective HIV response, the human rights capacity within the Joint Programme is weak. Both the UNAIDS Secretariat and the UN Development Programme (the co-sponsor with the broad lead on human rights) struggle with insufficient human and financial resources dedicated to human rights efforts in the HIV response. Several years ago, OHCHR discontinued dedicated capacity in its office for work on HIV concerns — such that it no longer even participates in meetings of the Reference Group. The UN Office on Drugs and Crime (UNODC) is the Joint Programme co-sponsor with lead responsibility for addressing HIV among people who use drugs, and its HIV unit was and is one of the few within the office that routinely engages with civil society and takes up human rights issues — yet this work, too, is suffering. Coordination of efforts among co-sponsors within the Joint Programme—including entities such as UNFPA and UN Women—must also be strengthened, resting on a foundation of a commitment to rights-based approaches.

- In short, despite the periodic rhetorical commitments of Member States, there is a systematic failure to adequately take up, and sustain, attention to human rights in the HIV response. This inadequate capacity is limiting the ability of the Joint Programme to strengthen the HIV response. The Review Panel should recommend measures to improve the human rights capacity of the Joint Programme — including (i) ensuring adequate resourcing within the UNAIDS Secretariat and co-sponsors to work on law and human rights and (ii) building the human rights competency of UNAIDS and co-sponsor staff at the country level.

THEME 2: GOVERNANCE

- **UNAIDS policy formulation:** The Review Panel is examining options for expanding participation in UNAIDS policy formulation. We concur with the suggestion already made to the Review Panel that there is insufficient systematic discussion and oversight of the wider global AIDS response in between UN High-Level Meetings on AIDS. In particular, we note the suggestion that the UNAIDS Programme Coordinating Board (PCB) should more consistently respond to developments and recommendations on key policy issues affecting the HIV response, including recommendations from bodies such as the Global Commission on HIV and the Law. We would also note other examples of great relevance to the HIV response, such as the Global Commission on Drug Policy and the UN Secretary-General's High-Level Panel on Access to Medicines. Similarly, HIV-relevant recommendations that emanate from the human rights mechanisms of the UN—from the UN Human Rights Council (including its Universal Periodic Review Process) to human rights treaty bodies and special procedures—should more regularly inform the work of the PCB. Finally, the Reference Group notes that it and other, similar advisory bodies to the UNAIDS Secretariat and/or Joint Programme have been constituted precisely because we and they offer technical expertise. The Reference Group submits that the governance model for the Joint Programme should provide for greater, regular engagement by the PCB with these bodies and others like them and with the substantive recommendations they provide. The Reference Group stands ready to meet with the PCB leadership and delegations in person or otherwise as may be useful.

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- **NGO and other representation on the PCB:** The Reference Group also urges the Review Panel to recommend ways of strengthening the role and engagement of the NGO Delegation, as well as the representation of people living with HIV and key populations particularly affected by HIV, on the PCB. We note that some have suggested the PCB be broadened to include representation from the private sector and/or foundations. Should such proposals move forward, it will be important for the Review Panel to consider carefully the potential for undue influence on UNAIDS priorities and positions, as well as ways to manage potential conflicts of interest that would arise in PCB decision-making.

THEME 3: FINANCING AND ACCOUNTABILITY

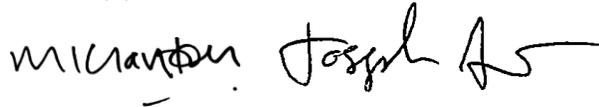
- **Financing human rights capacity:** As noted above, capacity within the Joint Programme on human rights is weak. The Review Panel should name and address this issue squarely in its recommendations. If UNAIDS is to be *sustainable* and *fit for purpose*, then it must be adequately resourced—and this must include support for adequate capacity within the Joint Programme (Secretariat and co-sponsors) to address the core human rights challenges that continue to impede effective responses to HIV around the world. The Panel should identify measures to this end. (As noted above, inadequate capacity for work on human rights related to HIV is a challenge that extends UN system-wide, including in key partners such as OHCHR; this, too, ultimately weakens the response to HIV. The Review Panel should therefore also recommend strengthening the capacity of the UN system more broadly to protect and promote human rights.)
- **Accountability internally regarding human rights competence:** We have noted above the importance of strengthening human rights capacity across the Joint Programme, including for staff working at country level that have a key role to play in advancing human rights in the HIV response. The Panel should therefore also identify means of ensuring accountability of staff within whose mandates such work falls. This could include training opportunities and requirements, as well as integrating assessment of competence on human rights issues, and assessment of human rights initiatives (where relevant), into staff work-plans and performance appraisals.
- **Accountability and the role of civil society:** The history of the HIV response has demonstrated the critical importance of civil society both in mobilizing funding for that response and in ensuring accountability, including with respect to sensitive issues such as human rights. In our view, a strong, central role for civil society actors will be essential in ensuring accountability in any new UNAIDS model—accountability not only in agreed-upon budgets, work-plans and reporting, but also in a broader sense to the people and communities whose rights and lives are at stake in this pandemic. It should be understood that part of the job of UNAIDS Secretariat and co-sponsor field staff is to meet regularly with organizations representing HIV-affected populations and with non-governmental organizations whose mandate includes defending and promoting the human rights of these populations.
- **Financing and collaboration with civil society:** Lastly, we emphasize that UNAIDS has a very special role in including and building innovative structures for civil society engagement within the UN system. UNAIDS has, on many occasions, set a standard for inclusiveness and participation from civil society that has been unprecedented and led to vibrant and effective partnerships and programs. This should be strengthened and seen as a core function of UNAIDS in future, while ensuring that

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the Joint Programme does not “crowd” the space of civil society (and even, in some instances, competing for funding).

We hope the Review Panel finds these observations useful in its deliberations. We would, of course, be pleased to discuss them in more detail should you wish.

Sincerely yours,

Handwritten signature in black ink, appearing to read "Michaela Clayton" and "Joseph Amon".

Michaela Clayton and Joseph Amon
Co-Chairs, UNAIDS Reference Group on HIV and Human Rights

Cc: Michel Sidibé, UNAIDS Executive Director
Helen Clark, UNDP Administrator & Chair, United Nations Development Group