

UNAIDS Reference Group on HIV and Human Rights

Twenty-first Meeting | Geneva, 25-26 November 2019

This report was prepared by the Secretariat of the UNAIDS Reference Group on HIV and Human Rights. The views contained herein are those of the members of the Reference Group and do not necessarily reflect the views of the UNAIDS Secretariat or the Co-sponsors of the Joint Programme.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

At its 21st meeting, the UNAIDS Reference Group on HIV and Human Rights adopted a number of conclusions and recommendations, as set out below.

Strengthening the capacity of the UNAIDS Secretariat and the Joint Programme as a whole to address key issues and challenges

The Reference Group has for many years been concerned about the need to ensure that the UNAIDS Secretariat (from headquarters to country level) and the Joint Programme as a whole are equipped to address key human rights challenges in the HIV response, in a consistent and sustained manner. The Reference Group identified a number of particular areas that warrant attention — some of longstanding concern, others emerging more recently — that it wished to draw to the attention of the new UNAIDS Executive Director, including:

- **UNAIDS' capacity and commitment to collaborate with and support civil society:** There is an ongoing need to ensure adequate, consistent capacity of UNAIDS and co-sponsors to defend and advocate for human rights, gender equality and key populations as an expected and essential part of their mandate, and to create space and opportunities for engagement by civil society organizations, particularly in settings where this is challenging. This extends from the leadership at the very top to capacity within UNAIDS Secretariat and co-sponsor headquarters to the capacity and commitment of staff at country level. UNAIDS also has an important role to play in supporting civil society organizations, including those from key populations and those working for women's health and rights, to access funds for efforts to protect and promote human rights, such as from the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund).
- **Collaboration with other key international actors:** The Reference Group is pleased to have ongoing representation at its meetings from the Office of the UN High Commissioner for Human Rights (OHCHR) and the Global Fund. It would be mutually beneficial to these organizations — and to the broader goal of ensuring human rights-based responses to HIV — for UNAIDS and OHCHR to have a more robust, institutionalized partnership, and to collaborate in specific areas such as building the capacity of civil society organizations to better use UN human rights mechanisms to advance human rights-based responses to HIV. The Reference Group would be pleased to explore with the UNAIDS Secretariat, relevant co-sponsors and OHCHR how best to engage with UN human rights treaty bodies as one strategy for advancing human rights in the HIV response at country level. The Reference Group also notes that UNAIDS, OHCHR and the Global Fund will all soon begin developing their respective new strategies (to take effect in 2021 or 2022). This provides an opportunity to discuss how best to ensure coordinated attention to HIV-related human rights issues by both UNAIDS (the Secretariat and co-sponsors) and OHCHR in the coming years, and to ensure that

funding to support programs reducing human rights-related barriers to HIV services remains an important strategic priority for the Global Fund.

- **Consistent, human rights-based positions:** It is important that the Joint Programme speaks with one voice on issues such as the removal of punitive laws and policies, including in relation to drugs (in keeping with the UN system common position,¹ UNAIDS' 2019 report on the subject,² and the recently-released *International Guidelines on Human Rights and Drug Policy* co-issued by UNAIDS³) and sex work (in keeping with the UNAIDS 2012 guidance note⁴). The Reference Group recommends that UNAIDS engage with the UN Committee on the Elimination of Discrimination Against Women (CEDAW) as it prepares a forthcoming general comment on the issue of human trafficking, in order to avoid the potential for any harmful effects on the human rights and health of sex workers. It is also essential that all UNAIDS staff, including at country level, be accountable for advancing UNAIDS' positions in relation to human rights.
- **Intellectual property policy and access to treatment:** As it has previously, the Reference Group recommends that UNAIDS senior management dedicate the necessary resources to ensure that there is capacity within the UNAIDS Secretariat to address the issue of intellectual property-related barriers to access to treatment, including by providing support to countries needing to address such barriers.
- **Human rights emergencies:** The Reference Group recommends that the UNAIDS Secretariat and Joint Programme co-sponsors develop a coordinated strategy for responding to urgent situations of ongoing or imminent human rights violations against key populations.

Digital technologies and big data: emerging human rights issues

- The Reference Group revisited its discussion from its December 2018 meeting regarding human rights concerns related to the HIV response arising from the emergence and spread of digital technologies, while also affirming that some such technologies offer real benefits for protecting and promoting health (and should form part of the discussion about how to achieve universal health coverage (UHC)).
- The Reference Group will develop a policy paper with a human rights-based analysis of the use of such technologies in the HIV response so as to maximize benefits and minimize harms. This analysis will be accompanied by a succinct summary guidance that can be used to help guide the Joint Programme and by engaging policy-makers, donors, researchers, service providers and others. This will complement work already initiated by co-sponsor United Nations Development Programme (UNDP) and be informed by analyses already prepared by the UN Special Rapporteur on the right to privacy.

¹ Chief Executives Board for Coordination, "United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration," UN Doc. CEB/2018/2 (Annex 1), <https://www.unsystem.org/CEBPublicFiles/CEB-2018-2-SoD.pdf>.

² UNAIDS, *Health, rights and drugs — Harm reduction, decriminalization and zero discrimination for people who use drugs* (March 2019),

https://www.unaids.org/en/resources/documents/2019/JC2954_UNAIDS_drugs_report_2019.

³ *International Guidelines on Human Rights and Drug Policy* (March 2019), <https://www.humanrights-drugpolicy.org/>.

⁴ *UNAIDS Guidance note on HIV and sex work* (April 2012),

https://www.unaids.org/en/resources/documents/2012/20120402_UNAIDS-guidance-note-HIV-sex-work.

- The Reference Group notes that the World Health Organization (WHO) is drafting a “Global Strategy on Digital Health 2020 – 2024,” and the Reference Group will, if capacity permits, seek to contribute to those discussions.
- The Reference Group recommends that UNDP, with support from UNAIDS, should develop a joint inter-agency guidance for Member States on the application of digital technologies for designing, coordinating and implementing effective and rights-based national HIV and AIDS policies and strategies.

Monitoring epidemic transition and setting global HIV targets for 2025: human rights issues

- With the benefit of further updates from the UNAIDS Secretariat, the Reference Group also continued its discussion of related initiatives by UNAIDS to (1) define and monitor “epidemic transition,” and (2) set internationally agreed-upon 2025 targets for the global response to HIV, en route to realizing the Sustainable Development Goal to “end AIDS” by 2030 — as well as estimating the resources needed to achieve that goal.
- The Reference Group welcomed the considerable additional work that had been done within the UNAIDS Secretariat to develop domains and indicators for monitoring the human rights dimensions of epidemic transition. The Reference Group provided additional input regarding how to integrate attention to specific populations (e.g. prisoners and other detainees, migrants, women and girls) and offered reflections related to setting a 2025 target for the goal of “zero discrimination.”
- The Reference Group encourages UNAIDS to continue the work of updating its framework on social enablers as part of this target-setting exercise and developing the broader epidemic transition metrics in a manner that appropriately incorporates human rights dimensions. Both of these should be understood as relevant across the work of the Joint Programme.

Sustainability of funding, social contracting and shrinking civic space

- The Reference Group continues to be deeply concerned about the sustainability of efforts to address human rights and gender equality dimensions of the HIV epidemic, including by networks of women living with HIV, key populations and other civil society organizations. This concern is further heightened in countries that are transitioning out of eligibility for funding (e.g. from the Global Fund). When international sources of funding are reduced, there is a risk that evidence-based services and programs for stigmatized key populations will not receive adequate funding from domestic sources and, similarly, nor will measures to protect and promote human rights and remove human rights-related barriers to services.
- The Reference Group reiterates its previous recommendation that UNAIDS play a role in mobilizing political support at country level for domestic financing to address HIV among key populations and to protect and promote human rights after countries transition out of support from international sources. This includes gathering data and building the case for the need for such services and their funding, particularly for key populations. In addition, recognizing that securing adequate domestic funding commitments in this area will remain challenging in some countries, the Reference Group recommends that UNAIDS continue to support efforts to ensure a more nuanced approach to international funding allocations (e.g. including by the Global Fund) to ensure that human rights programming and key populations are not left behind, including in middle-income countries.
- Social contracting — the practice of governments funding civil society organizations (including those serving young people and key populations) to deliver health prevention,

treatment, care and support services⁵ — has a role to play in facilitating ongoing financial support to programs for key populations and to protect human rights. The Reference Group reiterates its concern about the impact of punitive and discriminatory laws, policies and practices against key populations on impeding not only the delivery of services but also the prospect of social contracting with civil society organizations that include and work with key populations. In addition, the Reference Group reiterates that UNAIDS has a role to play in raising concerns regarding the growing trend toward shrinking the civic space available for such organizations.

- The Reference Group reiterates its recommendation that the UNAIDS Programme Coordinating Board should request a study into such restrictions and convene a **thematic discussion** of this challenge to an effective HIV response.
- The UNAIDS Secretariat and Joint Programme co-sponsors should collaborate to determine ways in which they can, as UN agencies, provide **concrete support to civil society organizations at country level** to undertake the activities needed for an effective HIV response, including for human rights programs such as those recommended by UNAIDS. (The Reference Group notes previous suggestions in this regard from earlier meetings.)
- The Reference Group also recommends to UNAIDS that it:
 - support and encourage countries to monitor, through existing processes such as periodic National AIDS Spending Assessments, not only the *level* of resources invested in the HIV response by countries from their own domestic budgets (in addition to donor contributions), but also *more in-depth monitoring of such domestic financing* by spending category, actual service delivery of such programs, and the ultimate beneficiaries of such programs. This will allow better assessment of whether domestic commitments are being invested in the right programs, in the right places and for the right people in order to make a difference in the epidemic; and
 - make the case to governments that removing punitive and discriminatory laws and policies, and investing in community services, will not only improve the efficiency of domestic investments in the HIV response, but will also assist with the realization of universal health coverage and ultimately governments' fiscal health.
- Finally, the Reference Group underscores for UNAIDS its important role in making the case to governments for the importance of investing in communities, including organizations of and representing key populations, in order to most effectively address the epidemic. At the same time, those communities must be able to engage not only in service delivery but also in advocacy for the defense and promotion of human rights, without being at risk of losing domestic government funding. They need a diversity of funding sources, and UNAIDS can play an important role in encouraging such donor support for this critical community work.⁶

Global HIV prevention

- With the benefit of an update from the UNAIDS Secretariat, the Reference Group took stock of progress to revitalize HIV prevention efforts by addressing the factors holding it back (i.e. gaps in political leadership, legal and policy barriers, gaps in data, inadequate

⁵ UNDP, *Guidance Note for the Analysis of NGO Social Contracting Mechanisms: The Experience of Europe and Central Asia* (2019), https://www.undp.org/content/dam/rbec/docs/NGO_socialcontracting_EN.pdf.

⁶ UNAIDS, *World AIDS Day 2019 — Communities make the difference* (2019), <https://www.unaids.org/en/resources/documents/2019/world-aids-day-2019-communities-make-the-difference>.

financing—including for the work of community-led responses, and much of this financing still coming from international sources). All of these factors are impeding implementation at scale of what we know works. The Reference Group is concerned that even the countries in the Global HIV Prevention Coalition that have committed to the HIV Prevention Roadmap 2020 are not on track with their previous commitments aimed at achieving by 2020 the agreed-upon 75% reduction in new infections compared to 2010.

- Recent case studies documented by civil society organizations suggest some key themes: service packages are ill-defined or not defined at all, and are often limited only to biomedical interventions; many countries have identified legal and policy barriers and made plans to address them, but there is little action taken toward implementation; and there is an absence of political courage to address the stigma and discrimination, gender-based violence and criminalization that must be challenged in order to accelerate HIV prevention efforts.
- The Reference Group recommends UNAIDS, the Global Fund and other key organizations (1) undertake a specific, coordinated initiative to identify human rights barriers to successful HIV prevention programming, and (2) create space for policy-makers who are doing successful HIV prevention initiatives, even in difficult environments, to share their experiences with others. The Reference Group is pleased to provide guidance on concrete actions to address human rights barriers.
- The Reference Group will seek to engage with the Global HIV Prevention Working Group that is animating the Global HIV Prevention Coalition, to advance discussion of human rights issues impeding HIV prevention. It will form a committee to lead this work on behalf of the Reference Group.

UNAIDS Strategy 2022-2027

The Reference Group was pleased to begin a discussion of how and when it can best contribute to the development of the next UNAIDS Strategy, for the period 2022-2027. The Reference Group was also pleased to learn that addressing human rights-related barriers to an effective HIV response is a priority for the new UNAIDS Executive Director. The Reference Group will collate its views regarding the integration of human rights into the new strategy, and will share these views with the UNAIDS Executive Director and the Programme Coordinating Board in due course.

International principles on the use of the criminal law

The Reference Group endorses the initiative underway by the International Commission of Jurists (ICJ) to develop, by 2021, international principles to address the detrimental impact on health, equality and human rights of criminalization with a focus on select conduct in the areas of sexuality, reproduction, drug use and HIV. The Reference Group supports the continued engagement of UNAIDS in this process, welcomes the participation of Reference Group members as appropriate, and looks forward to the opportunity for further discussion with the ICJ as the project unfolds.

Meeting with the UNAIDS Executive Director

The Reference Group was pleased to meet (by video link) for the first time with Ms. Winnie Byanyima, the new UNAIDS Executive Director who had just recently assumed her post. The Reference Group commended her for her history of human rights advocacy and recent public statements on the importance of human rights, and raised a number of priority issues with her, including:

- the growing concern regarding shrinking civic space and greater restrictions on civil society organizations to the detriment of the HIV response, and hence the importance of UNAIDS speaking out in support of, and collaborating with, civil society groups;
- the importance of UNAIDS continuing to be a strong — and even stronger — voice for harm reduction, an end to punitive laws, policies and practices (including following through on the 2012 UNAIDS commitment to press for the closure of compulsory drug detention centres), and for human rights-based drug policies;
- the importance of coordination and collaboration between UNAIDS and other entities, including civil society, and forthcoming opportunities for such an approach as UNAIDS, OHCHR and the Global Fund all develop new strategic plans;
- the role that UNAIDS can play in collaborating more closely with faith-based communities to advance health and human rights, including sexual and reproductive health and rights; and
- a number of “in-house” organizational matters that need to be addressed, including:
 - ensuring greater resources within the UNAIDS Secretariat for a robust human rights team and greater human rights capacity in country offices;
 - ensuring in-house capacity within UNAIDS Secretariat to address intellectual property policy issues affecting access to treatment;
 - committing resources to supporting for various initiatives such as the Global Partnership for Action to Eliminate All Forms of HIV-Related Stigma and Discrimination;
 - underscoring accountability, across UNAIDS and across the Joint Programme, to ensure that everyone is on board with supporting the human rights agenda and speaking with same voice (e.g. on issues such as sex work); and
 - ensuring that human rights are at the core of the mission, values and strategy of UNAIDS going forward, to demonstrate the unique value of UNAIDS and its position within the global HIV response.

The UNAIDS Executive Director welcomed the input of the Reference Group and offered some reflections on each of the abovementioned points. She indicated her intention to invite participation by the Reference Group in the design of the new UNAIDS Strategy for 2022-2027. She expressed her hope and appreciation that the Reference Group would provide ongoing advice and support as she advocates for human rights, particularly for key populations and for women and girls —support that will be needed when her advocacy generates adverse reactions. The Reference Group assured her that it would indeed play this advisory role and be a voice in support of UNAIDS and its Executive Director raising human right issues.

Closing

The Reference Group reiterated its thanks to departing member Michael Kirby for his contributions and service over many years as a member of the group. It also expressed its thanks to the UNAIDS Secretariat staff, and to the Co-Chairs and Reference Group Secretariat for their work in organizing the meeting.