

Fifteenth Meeting | 4–6 December 2013 Summary and Recommendations

This summary of recommendations was prepared by the Secretariat of the UNAIDS Reference Group on HIV and Human Rights after its fifteenth meeting (December 2013). The views contained herein are the views 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.

Human rights leadership remains critical in the HIV response

Reference Group Co-Chairs Jonathan Cohen and Michaela Clayton opened the meeting, welcoming all members to the fifteenth meeting of the UNAIDS Reference Group on HIV and Human Rights. Clayton reviewed the agenda, which had been informed by meetings of the Co-Chairs and UNAIDS senior management in September, as well as by suggestions from Reference Group members.

The Reference Group then welcomed Luiz Loures, UNAIDS Deputy Executive Director. Among a number of things, Loures emphasized the centrality of human rights in driving change within the HIV response. In particular, he highlighted the critical importance of the HIV treatment issue, describing treatment needs as an approaching fast-speed train which could crash if we are not prepared. Referring to the “end of AIDS” language, he noted that UNAIDS is well aware that there could be an end for some and not for others, because of treatment and service access issues. Loures emphasized the need to put protection of the vulnerable at the centre of everything UNAIDS does, repositioning the protection of human rights as fundamental work for the Joint Programme. He welcomed a stronger presence of and engagement with the Reference Group.

In response, members of the group expressed their appreciation for the engagement and enthusiasm of the Deputy Executive Director. However, they emphasized the still critical need for human rights leadership in a number of areas, such as consistent support for harm reduction, as well as addressing HIV-related stigma and discrimination, and criminalization (i.e., the criminalization of HIV exposure, drug use, sex work and homosexuality). The obstacles many face in accessing medications as a result of intellectual property barriers is another crisis that demands serious human rights leadership.

Reference Group members reiterated the importance of getting the messaging and communications right. For instance, UNAIDS should do more to emphasize in its description of the possible “end of AIDS” that equity is a core concern and a pre-requisite for ending AIDS in the most marginalized communities. Nor can UNAIDS underline the importance of human rights without addressing the worsening predicament in which groups doing human rights work on the ground, in the context of HIV, are losing their funding and shutting down. Members recalled the reason UNAIDS was created in the first place; that is, to tackle the politically difficult issues (i.e., sex and drugs), a purpose which is of equal importance today.

In the ensuing discussion, amongst other points, Loures stated that UNAIDS is strengthening its work on drug use issues, including taking an active role in the Commission on Narcotic Drugs in 2014 and UNGASS in 2016. With respect to the post-2015 agenda, he indicated that UNAIDS is pursuing two interventions: preparing and implementing its own strategy while supporting the work of the Lancet Commission. On discrimination, Loures agreed that it has not been adequately addressed in the epidemic and he suggested that “just doing better at what we do now” is not enough. However, he pointed out that the challenge was to move from rhetoric to concrete action points.

Loures invited the Reference Group to continue engaging with UNAIDS about where the Joint Programme can most usefully intervene.

Before moving into a discussion about intellectual property and access to medications, Reference Group members heard reports from Susan Timberlake, Chief Human Rights and Law Division, UNAIDS, and Tenu Avafia, Policy Advisor, Health and Development Practice, UNDP, on activities undertaken by the UNAIDS Secretariat and UNDP since the 14th meeting of the Reference Group in December 2012.

Timberlake reported that the UNAIDS Secretariat had undertaken a number of activities related to the issues of shared responsibility and global solidarity, human rights and the investment framework, and scaling up HIV treatment, the three priority topics of the last Reference Group meeting.

Amongst other activities, Timberlake highlighted the Secretariat's support of human rights activities at the regional and country level by increasing human rights staffing and backstopping countries on crisis response and draft legislation. It had undertaken advocacy to end the overly broad criminalization of HIV transmission and exposure¹ and is promoting judicial leadership and engagement in the HIV response.² *Amicus curiae* briefs had been submitted in two sex work-related cases (before the Supreme Court of Canada and United States Supreme Court) and a third brief would be submitted on the issue of the criminalization of same-sex relations (before the High Court of Malawi). They had also been involved in the development of tools to measure stigma and discrimination and evaluate programs, as well as advocating for the elimination of HIV-related travel restrictions.

With respect to UNDP, Avafia shared updates relating to four areas of work. First, with respect to implementation of the Global Commission on HIV and the Law's recommendations, UNDP is working with partners in 82 countries on legal environment assessments, national dialogues and action planning, judicial capacity strengthening, parliamentarian advocacy and capacity development, access to justice, and developing and disseminating various knowledge and capacity development tools. Secondly, together with the UNFPA Urban Health and Justice Initiative, they have activities related to key populations, human rights and the law underway in 25 cities. In addition, the Global Forum on Cities, HIV and Health Inequalities took place in October 2013, presenting an opportunity to review effective strategies for integrating key populations into action plans.

UNDP continues to engage on the critical issue of access to treatment, providing analysis, capacity development assistance, and supporting policy and technical co-operation. Finally, Avafia discussed the promotion of rights-based programming at the Global Fund and processes for linking country-level Global Commission follow-up with the new funding model. This work includes providing technical support on enabling legal environments and critical enablers, as well as ensuring grants include legal services, legal literacy programmes, and sensitisation of the judiciary, parliamentarians and law enforcement.

In the discussion that ensued, Reference Group members expressed concern for the lack of meaningful human rights content in recent UNAIDS' documents, remarking on the juxtaposition of senior leadership's stated commitment to human rights with the Reference Group's own inopportunity to comment on key documents. Members also highlighted important opportunities for UNAIDS to demonstrate leadership with respect to human rights violations (e.g., travel restrictions of Trinidad and Tobago, donor politics influencing human rights programming, etc.). A strong sentiment was expressed regarding the necessity for UNAIDS and its Co-sponsors to continually monitor the human rights implications of policies and programs in all areas of the HIV response. Finally, Reference Group members emphasized the need for a report-back mechanism and ongoing follow-up to the Global Commission's report, and raised some questions about whether the method being used by UNDP to track activity emanating from the Commission reflected either significant new work or the country in question's actual HIV and human rights situation.

Intellectual property access to medicines and human rights

To launch the Reference Group's deliberations on intellectual property (IP) and access to medicines issues, Tenu Avafia (UNDP) and Carlos Passarelli (Senior Expert Treatment, UNAIDS) remarked on the immense challenge

¹ Including by publishing a new policy brief: "Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations," UNAIDS Guidance Note, 2013.

² Including by publishing a new book: *Judging the epidemic: A judicial handbook on HIV, human rights and the law*, UNAIDS 2013.

of having enough medications for the 2.8 million eligible for treatment under the WHO's revised treatment guidelines (2013). They noted that, in the future, the majority in need of treatment will be in middle income countries, illustrated current price differentials, and noted that prior to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), many countries did not grant patents for pharmaceutical products. They described the elaborate enforcement mechanisms that have emerged for intellectual property rights.

Avafia and Passarelli noted the Global Commission on HIV and the Law's strong IP recommendations and presented a range of options to improve access to medications. Reference Group members noted that the primary focus of the Reference Group is on options that bring IP into line with international human rights standards.

Several members expressed their alarm at the sustained, systematic multi-forum assault on the policy space available to countries in order to promote universal and equitable access to affordable medicines, and noted that as the need grows for newer, less toxic and more effective treatment, and/or second- and third-line treatment, the situation could become even more dire. The Reference Group thus expressed its support for UNAIDS' taking leadership with respect to the important role of IP to treatment access.

Reference Group members agreed that it is critical for UN agencies to support efforts to preserve a range of policy options and to push for more substantive reform of the international IP regime, as both a public health and human rights imperative. Members referred to the recommendations of the Global Commission, in particular the recommendation for the UN Secretary General to convene a high-level body to propose a new regime that is consistent with international human rights law and endorsed human rights-specific follow-up to the recent meeting in New York to discuss the Commission's IP recommendations.

Reference Group Members recommended the pursuit of a more activist civil society response to complement efforts aimed at shifting international legal norms. Engagement with human rights mechanisms is most effective when combined with civil society mobilization, as illustrated by the confluence of the (then) Commission on Human Rights resolutions on treatment with the Durban AIDS conference.

The Reference Group noted with concern that the Global Fund, together with partners such as GAVI Alliance, UNDP, UNICEF, UNITAID and the World Bank, has established a "blue-ribbon task force" on tiered pricing of medicines for middle-income countries. This process could "lock in" an approach that would, in fact, be a step backward by further limiting the policy flexibility of countries and failing to maximize access, on equitable terms, for those in middle income countries.

Recommendations

- 1.1 There is a looming crisis in treatment sustainability, as more people need to take up effective treatment for HIV, tuberculosis and hepatitis C. This crisis will be further heightened as the need grows for newer, less toxic and more effective treatment, and/or second- and third-line treatment, all of which will be under patent and prohibitively expensive. **UNAIDS and all of its co-sponsors working on access to treatment should therefore unite to support the implementation of the intellectual property recommendations of the Global Commission on HIV and the Law, in particular recommendation 6.1.**
- 1.2 **The Reference Group supports the action of the UNAIDS Executive Director in co-authoring, with the UNDP administrator and the High Commissioner for Human Rights, a letter to the UN Secretary General requesting the implementation of this recommendation, and requests further follow-up with a view to urgent action.**
- 1.3 **UNAIDS, UNDP and OHCHR should actively support human rights-based initiatives to implement the recommendations of the Global Commission on HIV and the Law and should co-convene a meeting of human rights experts in 2014, including at least two Reference Group members, to further explore avenues to advance the intellectual property recommendations of the Global Commission in human rights institutions.**
- 1.4 **UNAIDS should provide funding for human rights and IP experts to work on this issue, including through strategic litigation, advocacy campaigns and research and analysis.**

- 1.5 **The UNAIDS/Lancet Commission should include in its work an appreciation of the crisis that is looming because of global intellectual property rules restricting the availability of generic pharmaceuticals, and should endorse the recommendations of the Global Commission on HIV and the Law on this matter.**
- 1.6 **The Global Fund should respond urgently to the crisis in the cost of pharmaceutical products for testing and treating HIV and AIDS, including by supporting the use of flexibilities under TRIPS (and other legal measures) as a key element of a sustainable response to the need for access to affordable medicines.**
- 1.7 **UNAIDS and its Co-sponsors should put in place means of gathering data that will identify and chart the crisis in the costs of pharmaceuticals and to give proper publicity to these data.**

HIV testing: the way forward

Joanne Csete, Session Chair, contextualized this conversation by noting that the technological issues related to HIV testing have changed, but the fundamental human rights issues have not. The Reference Group then heard presentations by Rachel Baggaley (HIV Department, WHO) and Mariangela Simao (Director, Rights, Gender and Community Mobilization Department, UNAIDS), who provided an overview of different testing models and associated challenges.

In particular, Baggaley emphasized the importance of linkage to care as a human rights consideration in testing, which has been a priority for the Reference Group. She highlighted for further group discussion several current challenges in HIV testing: (1) mandatory testing, especially for key populations; (2) access to acceptable and equitable testing and counselling for key populations; (3) quality of tests (i.e., there could be a significant number of people on ARV treatment who are not HIV-positive); and (4) follow-up on the partner/couples testing guidance.

Simao emphasized the key role of testing, as ending AIDS begins with people getting tested. She suggested a focus on stigma and discrimination in frontline health services to address barriers to testing. Testing through community systems is complementary to healthcare settings, not a complete alternative, she posited.

Reference Group members engaged in a rich discussion about HIV testing in the context of multiple structural and human rights-related barriers, including criminalization, stigma and discrimination, lack of confidentiality, low quality of tests, the inability of adolescents to consent in many places, incomplete information, the prejudicial attitudes of many healthcare workers, and lack of linkage to care in many places. As one Reference Group member noted, “. . . the only way to normalize testing is to normalize the environment.”

A key theme that emerged, as in past Reference Group discussions, was how progress in HIV testing is measured. Testing uptake per se is not the correct goal, as it could have the unintended effect of incentivizing or rewarding coercive practices. The ultimate rights-based indicator toward which States should progressively advance is clinical success on HIV treatment for as many people as possible.

A second theme in the Reference Group’s discussion was the imperative to oppose laws that criminalize HIV transmission and associated risk behaviours, which represent a significant barrier to testing and accessing care. The Reference Group encouraged UNAIDS and WHO to express the anti-criminalization agenda at the international level.

A third theme focused on choice and informed consent. Individuals must be able to choose freely whether to test, with the benefit of full information. Full information should include the benefits of testing, the state of the science regarding early treatment, the prevention benefits of treatment, recognition of the stigma individuals may face, and the state of the law. The need to know the benefits and risks of testing is not of theoretical importance; instead, it is essential to improve the effectiveness of testing. If HIV is exceptional in this regard compared with other diseases, it may be that the level of informed consent employed with respect to other diseases is insufficient.

The Co-Chairs recounted that at their meeting in September 2013, the Executive Director had requested advice from the Reference Group on a human rights-based approach to increasing HIV testing. In light of this

request and the Reference Group's discussion on continuing rights-based barriers to testing, the Reference Group committed to updating its *Statement and recommendations on scaling up HIV testing and counselling* (2007).

Recommendations:

- 2.1 There is an ongoing need to increase access to voluntary counselling and testing, as testing rates remain low in many settings. **The Reference Group encourages the provision of multiple HIV testing settings and modalities, in particular those that integrate HIV testing with other services.**
- 2.2 **UNAIDS should focus greater resources on removing barriers to testing for marginalized and criminalized populations, to linking those testing with prevention and treatment services, and to retaining those who test positive in treatment.**
- 2.3 **UNAIDS and WHO should develop indicators for success with respect to testing that are based on addressing barriers to testing and linkage to care rather than on the number or percentage of people tested.**

The Treatment Initiative

Philippe Lepere (Senior Adviser, Office of Special Initiatives, UNAIDS) and Marco Vitoria (Medical Officer, HIV Treatment and Care, WHO) provided an overview of UNAIDS' "Treatment 2015" Initiative and the revised Guidelines on HIV Treatment (WHO, 2013). Lepere explained that the goal of the treatment initiative is for 15 million people to be accessing treatment by 2015. However, in light of the revised guidelines, 28.6 million people will be eligible for treatment. He suggested that the treatment gap was already substantial but in light of these new numbers, there is need to recalibrate the treatment targets.

He discussed five key challenges: (1) societal obstacles (i.e., lack of knowledge of HIV status, punitive laws and policies, stigma and discrimination); (2) diverse facility level costs resulting in a huge variation in the cost of treatment from one country to another; (3) the treatment cascade (i.e., loss to follow-up/attrition at different points from diagnosis through adherence); (4) delivery systems (i.e., distance to service facilities); and (5) key populations and their partners. He also helpfully itemized several decisions that will have to be taken as the Treatment Initiative is rolled out, such as what the new target(s) should be, how to implement the 2013 guidelines, how community systems can be used in innovative ways to help meet targets, and how countries can reduce the costs of providing treatment.

Vitoria provided an overview of the new WHO guidelines, highlighting that they are intended to balance the clinical (i.e., what to do), operational (i.e., how to do) and programmatic (i.e., how to decide what to do). These guidelines are targeted at program managers, not clinicians. They will be adjusted over time and evolve as a dynamic document.

Against this backdrop, the Reference Group discussed the imperative to scale up HIV treatment, which is a regular topic of discussion. While supportive of the laudable goals of the Treatment Initiative, Reference Group members felt the document could have been strengthened by explicitly identifying key barriers such as the misapplication of criminal laws, and by interrogating the causes of failure to initiate and maintain treatment. The Reference Group noted that vast majority of people without access to treatment are poor and/or from key populations. Without prioritizing the socially excluded and most vulnerable, the Reference Group fears that success on the Treatment Initiative is impossible. Persistent issues of late presentation provide an opportunity to highlight human rights issues and barriers to access.

It was noted that the legal obligation of richer nations to support nations that are unable to provide treatment is clear, but articulating obligations with respect to international assistance and cooperation with nations who are *unwilling* to provide treatment to certain populations is trickier. It was also noted that even where treatment access has been secured, it is imperative to provide complementary services, medical monitoring and underlying determinants of health requirements (e.g., nutrition, housing, measures to prevent and punish violence and discrimination, etc.). From a human rights perspective, these are inseparable from treatment issues.

The Reference Group also discussed the ethical issues that arise in determining where to put resources. For example, when more treatment becomes available, who will have access to it (e.g., the newly diagnosed or those

who have been waiting for treatment for years)? Another dilemma arises where prioritizing treatment results in the de-prioritization of prevention.

In light of the urgent need to address human rights issues related to key populations in order to meet treatment targets, the Reference Group engaged in a discussion regarding the need for UNAIDS staff members, at all levels of the organization, to be human rights champions. An inspiring goal would be for each country level staff member to be empowered to dispel myths, support men who have sex with men, sex worker and drug users groups who are working in hostile environments, and to tackle the tough political and cultural issues. The recent message from Michel Sidibé to staff and the commitment expressed by Luiz Loures at the staff event on December 4, 2013 are very welcome measures demonstrating an organizational recommitment to tackling these issues.³

While the Reference Group was generally supportive of exploring new delivery methods and employing innovative funding and programming strategies, concerns were raised that relying solely on community delivery services can become an excuse for governments to neglect their responsibilities. Many community advocacy groups and CBOs are also operating in very hostile environments. Moreover, many community members are not recognized as healthcare providers so cannot actually deliver the required services, which is a problem that needs to be addressed.

Another issue is that the new guidelines are extremely complex. People living with HIV need something very accessible in order to make their own informed treatment decisions.

Recommendation

3. **UNAIDS should take leadership on the controversial and difficult issues regarding barriers to accessing prevention, care, treatment and support.** The misapplication of criminal laws, priority setting regarding who can access treatment and prevention priorities are all issues that must be addressed from a human rights-based approach.

Issues raised by the Lancet-UNAIDS Commission

Ruth Blackshaw (Policy and Strategy Officer, Strategic Policy Directions, UNAIDS) and Tim Martineau (Chief of Staff, UNAIDS) provided an overview of the UNAIDS and Lancet Commission: Defeating AIDS — Advancing Global Health, noting that the Commission was established in May 2013 to answer three questions in the context of the imminent end of the Millennium Development Goals, namely: (1) What will it take to end AIDS? (2) How can the experience of the AIDS response serve as a transformative force in global health and development? and (3) How should the global health and AIDS architecture be modernized for the post-2015 development agenda? They reported that the final meeting of the Commission will take place in February 2014 and a report launched by mid-2014.

Martineau noted that it is the intention of the UNAIDS Secretariat that the Commission report be used as a tool to help secure a position for HIV in the post-2015 development agenda. It is anticipated that there will be some element within the development agenda about health, but the UNAIDS Secretariat does not want HIV to appear just as a health systems issue.

Michael Kirby, who is both a member of Reference Group and also a Commissioner, provided some reflections on the Commission. He emphasized that the original idea of the Commission is laudable but lamented that the process thus far, and the working papers, had been inadequate for the task. Kirby observed that the future of HIV, and indeed global health more broadly, lies down the path of human rights; this is a key lesson of the HIV response that we ignore at our peril.

The Reference Group welcomes the admirable intent behind the Commission. However, the Reference Group is of the view that, so far, both the process and substance of the Commission's work have been lacking and there is a very real risk that its work will not result in clear or appropriate positioning of AIDS in the post-2015 agenda.

The Reference Group is concerned that the process will be insufficient to ensure the meaningful engagement of people living with HIV and other key populations most affected by the epidemic. Members of the Reference Group also expressed concerns that the composition and approach of the Commission may reflect an emphasis on

³ See section titled "Reference Group Interaction with UNAIDS Secretariat Staff" at the end of this report.

securing the engagement of high-level figures without ensuring adequate substantive underpinnings that would enable the Commissioners to answer the profoundly important questions before them, all of which must include attention to the human rights challenges to be faced in ending AIDS and advancing global health.

In general, the Reference Group was disappointed by the three draft papers prepared by the Commission's Working Groups. HIV must feature prominently and explicitly in any post-2015 agenda, and that agenda must benefit from, and be transformed by, the lessons learned from the AIDS response. However, the Reference Group believes that the Commission's draft papers contain various inaccuracies, are weak on substance, and fail to highlight both the human rights lessons learned from the AIDS response and the major challenges that remain. The Reference Group therefore encouraged a radical revision and strengthening of the analysis prior to the launch of the Commission's final report. The basic message should be that ending AIDS is possible but it will take time, sustained commitment and funding, as well as doing things differently – and in particular, defending and realizing human rights, particularly of the most affected populations.

The Reference Group committed to drafting a statement with respect to HIV and human rights in relation to the UNAIDS Lancet Commission.

HIV, sex work and human rights

For this session, the Reference Group was joined by Jenny Butler (Senior Technical Advisor HIV and Key Populations UNFPA) and Vivek Divan (Policy Specialist for Key Populations and Access to Justice UNDP) by phone. Meena Seshu (Secretary-General, SANGRAM) and Susan Timberlake also presented to the group.

The impetus for this discussion was a recent campaign by Equality Now, calling on UN agencies to account for supporting decriminalization of sex work,⁴ and the subsequent response from the UNAIDS Executive Director stating that UNAIDS does not support the decriminalization of “pimping or brothel-keeping,” which has focused a spotlight on sex worker rights and HIV best practice. Reference Group members felt that the Executive Director's response was not consistent with the position of Joint Programme supporting full decriminalization and, moreover, used unhelpful terminology that could support the criminalization of sex workers' workplaces and make them more vulnerable. The letter has thus been potentially damaging to the sex worker rights movement, even as this movement continues to regard UNAIDS as an ally in its decriminalization stance. One Member observed that there is a lesson to learn from these events about the importance of UNAIDS not being shaken from its core principles by a group without HIV expertise.

The political reality is that this issue remains divisive and not well understood. In the discussion, it was noted that the UNAIDS Secretariat cannot move forward alone on this issue. Action must be taken in concert with sex workers and sex worker organizations, other UN agencies and civil society. Sex worker's voices and organizing have been fundamental in changing the approach to sex work and HIV risk. The Reference Group supports building upon this momentum.

Members also noted that appropriate terminology must be employed at all times in discussing sex work and HIV. The UNAIDS Secretariat and the Co-sponsors must draw a clear distinction between trafficking/exploitation and sex work. Furthermore, the term “pimps” has problematic racial connotations and should be replaced with the more neutral “third parties.”

The Reference Group noted with concern the rise of the so-called “Nordic model,” with France having just passed legislation to criminalize the purchase of sex (i.e., punish the client). One Member suggested that this is likely to have a negative impact within Francophone countries of Africa, where new laws against sex work may be passed. UNAIDS needs to be prepared to stand with and support colleagues in Africa.

The Reference Group spoke about the perception that more laws on sex work are needed, yet the criminalization of sex workers and their workplaces prevents puts sex workers at risk of violence and exploitation while preventing them from seeking redress through police and the justice system. The failure is not a lack of laws but the misuse or lack of use of existing laws to protect all people from exploitation and Members felt that this point must be strongly made.

⁴ “United Nations: Listen to survivors – don't jeopardize efforts to prevent sex trafficking,” 20 September 2013. See http://www.equalitynow.org/take_action/sex_trafficking_action511.

Recommendations

- 4.1 The Reference Group notes with appreciation that UNAIDS convened the Advisory Group on Sex Work and HIV, published helpful clarifying annexes to the Guidance Note on HIV and Sex Work, and has advocated for the removal of punitive laws that impede HIV responses. However, recent events have shown that on the important issue of full decriminalization of sex work and related activities, there is lack of clarity in the position of the UNAIDS Secretariat. The Reference Group is aware that the UNAIDS' Executive Director has proposed convening a process, with sex workers and Co-sponsors, to address legal and programmatic issues in the context of sex work. **The Reference Group welcomes this proposal and recommends that it comprise a consistently available mechanism for direct and prompt consultation with sex work representatives.**
- 4.2 **UNAIDS should, in consultation with sex workers, prepare an authoritative UN account of the harms of criminalization of sex work and related activities.**
- 4.3 **UNAIDS should declare publicly its support for the full decriminalization of sex work and related activities, and should advise country teams and Co-sponsors of the importance of this position for the HIV response.**

Human rights and drug policy in advance of the 2016 UNGASS on drugs

The Reference Group benefited from presentations by Monica Beg (Chief, HIV/AIDS Section UNODC, who was joined by Gilberto Gerra) by Skype, and by Alison Crockett (Senior Advisor, Most at Risk Populations, UNAIDS) who provided an overview of international drug policy activities now through to the United Nations General Assembly Special Session (UNGASS) on drugs in 2016. The first key event is the High Level Review, which will take place March 13–14, 2014, the outcome of which will be a joint Ministerial Statement. There are several mechanisms for civil society involvement, including the Vienna NGO Committee on Drugs and the UNODC/CSO group on HIV and people who use drugs. In terms of UN preparations for UNGASS 2016, the United Nations Task Team, co-chaired by UNODC, represents a number of UN organizations.

Crockett shared her concerns that the issue of drug use and HIV has been reduced to a discussion of commodities (i.e., methadone, ARVs, needles). She echoed the perspective of the Reference Group that human rights abuses against people who use drugs remain rampant, which is a product of the legal and policy environment. She highlighted as priority issues the large number of people who are imprisoned because of alleged drug use (which heightens vulnerability to HIV), constructing strong public health messages around criminalized activities, exacerbation of co-infections, and violence.

The Reference Group engaged in a discussion about how to use the opportunity of the 2016 UNGASS most strategically. Concern was expressed that discussions about the joint statement have so far removed any reference to harm reduction. In addition, criminalization of drugs possessed for personal use was flagged as a key obstacle in the HIV response which is not being adequately addressed in these processes. Access to pain medications is also a critical issue.

UNODC reported that they are preparing a document on possession for personal use. They indicated that it will emphasize that the conventions require Member States to provide support, not punishment, with respect to personal drug use; and that the authority to decriminalize possession is in the conventions. The Reference Group welcomed the development of this document.

The Reference Group agreed that there has never been a more crucial moment for UNAIDS leadership on removing punitive drug laws and policies that are clear barriers to the success of HIV responses. The Reference Group therefore encouraged UN agencies to work towards shared position statements with clear messaging. Members agreed that civil society also needs to have a voice and meaningful engagement in the High-level Review process and that the planning process for further activities in preparation for the UNGASS, after the high-level review, needs to begin.

Recommendations

- 5.1 **The Reference Group supports the attendance of the UNAIDS Executive Director at the Commission on Narcotic Drugs 2014 and encourages him to make a bold statement, highlighting the many unfulfilled commitments of the international community for harm reduction services and protection of the rights of people who use drugs.** In particular, the Reference Group encourages the Executive Director to highlight:
- The connection between criminalization of drug use and minor possession on the one hand and HIV risk on the other;
 - The devastating consequences with respect to HIV of mass incarceration of minor, non-violent offenders, with no attention to ensuring harm reduction and other services for those in custody; and
 - “Treatment as prevention” is a unattainable for people who are constantly searched, arrested, detained, registered publicly as criminals and abandoned by their communities.
- 5.2 **All UN agencies that work on aspects of drug policy should encourage national governments to establish drug control mechanisms that ensure the place of health and social service sectors around the table along with police and security officials.**
- 5.3 **UNAIDS should urge the Secretary-General to continue to pursue a UN system-wide drug policy-making mechanism that puts health, economic development, human development and human rights on par with drug law enforcement.**
- 5.4 **UNAIDS should do everything possible to ensure that HIV and human rights concerns are adequately reflected in both the debate and the official declaration of the UNGASS.**
- 5.5 **UNAIDS should do everything possible to ensure the involvement of civil society from the HIV and human rights sectors in the UNGASS debates and preparatory processes.**
- 5.6 **UNAIDS should seek support of the Co-sponsors for a common UN position based on the following principles:**
- People who are dependent on drugs should be subject to public health, not criminal, measures;
 - All harm reduction measures should be legal and available;
 - Possession for personal use should not be criminalized; and
 - Drug use is a human rights issue, not just a health issue. The human rights of people who use drugs must be respected and protected.
- 5.7 **The UNAIDS’ Executive Director should read the report of the West African Commission on Drugs, once released, and endorse any call for the decriminalization of drug use.**
- 5.8 **The Reference Group welcomes the joint statement developed by 12 UN agencies calling for the closure of compulsory drug detention centres, and UNAIDS should follow up on all of the recommendations the Reference Group issued in its report on the 12th meeting in March 2011.**
- 5.9 **UNODC should encourage all Member States to provide accessible harm reduction services, including in places of detention.**
- 5.10 **UNODC, UNAIDS and UNDP should develop a joint statement on the decriminalization of personal use before UNGASS 2016.**
- 5.11 **UNAIDS, UNDP and WHO should prepare an analysis of how the international drug control regime has impacted on their mandates.**

Presentation of Reference Group recommendations to Tim Martineau, UNAIDS Chief of Staff

The Reference Group's fifteenth meeting concluded with a discussion with Tim Martineau, UNAIDS Chief of Staff. Co-Chairs Clayton and Jonathan welcomed him. Reference Group member Michael Kirby presented an overview of the discussions of the group and some of the recommendations that the Reference Group would be issuing.

Martineau thanked the Reference Group. Amongst other comments, Martineau expressed his support for a mid-year meeting of the Co-Chairs and UNAIDS senior management and for a staff event at the next Reference Group meeting. He committed to explore how to best enhance staff competence on human rights issues and the UNAIDS Secretariat's in-house expertise on intellectual property. He also welcomed the initiative to update the Reference Group's statement on HIV counselling and testing.

Reference Group members welcomed Martineau's comments regarding the urgency of addressing treatment access issues and his assurance that the UNAIDS Secretariat had not stepped away from the pro-decriminalization position on sex work. With respect to drug policy, he noted that UNODC and the UNAIDS Secretariat must work together to promote effective and rights-based policies and programmes for people who use drugs.

The Reference Group reiterated the request that their input be sought on key UNAIDS documents to ensure that human rights are adequately and appropriately addressed. The Reference Group is a resource for UNAIDS and the Co-sponsors; engaging the Reference Group should be an institutionalized commitment.

Reference Group interaction with UNAIDS Secretariat staff

On December 4, 2013, for the first time in the history of the Reference Group, an all-staff event was arranged to facilitate engagement between the staff and Reference Group Members, moderated by Jonathan Cohen and Luiz Loures. At the outset, Cohen noted that Reference Group Members have always believed in and counted on UNAIDS' human rights leadership in the HIV response. He noted that as much as human rights work can be challenging because it requires taking on the tough issues, we know that it is possible and it can be successful.

Four other Members also addressed the staff, highlighting different human rights issues in UNAIDS mandate. One member spoke about HIV testing, for example, noting that the only way to "normalize" HIV testing is to normalize HIV. She urged country level staff to push back against calls for mandatory testing, speak out against stock-outs of medicines, take up IP issues, and to support civil society on these issues. Another addressed the necessity of having the involvement and leadership of key populations in the HIV response, noting the hindrance posed by harsh legal environments. She encouraged staff to support sex workers and other criminalized populations to become visible and to call for decriminalization. A third Reference Group member spoke about the mass incarceration of people who use drugs and the denial of HIV prevention and treatment to them. She stated that UNAIDS is needed as a counterweight to agencies such as the Commission on Narcotic Drugs. Gracia Violeta Ross spoke about the ongoing and significant problems of stigma and discrimination, which impede the HIV response and harm individuals living with or affected by HIV. The overarching message was that UNAIDS staff must be courageous, vocal and connected with the people.

Loures concluded the session by reinforcing the Executive Director's message calling on staff to courageously defend human rights. He asserted that the end of AIDS can only come about with human rights. He committed to tapping the expertise of the Reference Group as UNAIDS enters this new phase in the HIV response. He also requested that members of the Reference Group engage with staff every time they meet in Geneva.

Recommendations

- 6.1 The Reference Group welcomes the opportunity for its members to engage directly with UNAIDS Secretariat staff across the Joint Programme and recommends that a staff event becomes a regular feature of Reference Group meetings.**

- 6.2 **The Reference Group recommends increased engagement with human rights experts and issues and notes with appreciation UNAIDS Deputy Executive Director Luiz Loures' commitment to facilitate these interactions.**
- 6.3 The Reference Group notes with concern that difficulties exist within UNAIDS in translating human rights messages into concrete action in the field. **The Reference Group recommends that management clearly identifies, addresses and helps to resolve any difficulties translating human rights messaging into direct action.**
- 6.4 The Reference Group offers advice and the participation of its member to contribute to effective and practical training modules to be used both at entry and in continuing training of UNAIDS staff. **The Reference Group recommends that such training should be a pre-requisite to formal recruitment into UNAIDS service and, as appropriate, to continuing employment by the Joint Programme.**
- 6.5 The Reference Group acknowledges that UNAIDS staff are taking bold stands in support of human rights and rights-based responses to HIV, including at the country level. UNAIDS should support staff members who do this in hostile environments. The Reference Group proposes that the UNAIDS Executive Director institute acknowledgment and incentives for UNAIDS staff who become champions of those vulnerable to human rights abuse or discrimination. Ultimately, **UNAIDS should make the centrality of human rights law and policy to the realization of UNAIDS' mandate clear to all staff.**