HIV AND HUMAN RIGHTS
INFORMATION NOTE

Introduction

The Global Fund's new funding model is designed to enable strategic investment for maximum impact. Thirty years of responding to HIV have demonstrated that these responses cannot be strategic and effective without also respecting human rights.

The Global Fund's Strategy 2012-2016 aims to protect and promote human rights by:

1. Integrating human rights considerations throughout the grant cycle;
2. Increasing investments in programs that address human rights-related barriers to access; and
3. Ensuring that the Global Fund does not support programs that infringe human rights.

The Global Fund's Gender Equality Strategy and the Sexual Orientation and Gender Identities (SOGI) Strategy also encourage investment in programs that reduce legal and policy barriers to access to HIV services for women and girls, as well as for sexual minorities.

Global Fund applicants are strongly encouraged to incorporate programming that fulfills the strategic objective above. In its 2012 report, the Global Fund Technical Review Panel recommended that "In order to ensure effective program implementation, applicants should be instructed that human rights-related issues be given due importance in the discussion of how the proposal will be implemented, and that failure to do so will jeopardize the application."

Why is protecting and promoting human rights important in the HIV response?

Lack of respect for human rights and the transmission of HIV are interrelated. HIV infection is unparalleled in human history in terms of the stigma and discrimination attached to it, even in places where treatment is widely available. People living with HIV (PLHIV) are often rejected by their families and communities, and experience discrimination by employers, schools, landlords, and health providers.

At the same time, violations of human rights undermine HIV prevention and treatment programs, and can contribute to the transmission of HIV. Fear of discrimination makes many people afraid to test for HIV, to use prevention and to take up treatment. Due to gender inequality and gender-based violence, women and girls often cannot avoid relationships or coerced sex that make them vulnerable to HIV, cannot negotiate condom use and cannot support themselves and their children if living with HIV, due to abandonment, disinheritance and property-grabbing. Many of the people most affected by the epidemic (sex workers, people who use drugs, men who have sex with men and transgender people) are highly marginalized and criminalized. Thus, stigma,

discrimination, gender inequality, violence against women and criminalization remain major barriers to the provision, uptake and adherence to prevention, treatment, care and support programs.

In order to achieve optimal conditions for the uptake of prevention, testing, treatment and care services, it is necessary to reduce such human rights barriers through programs that **critically enable** these services.[1] People are more likely to use health services if they are confident that they will not face discrimination; that their use of services will not expose them to other risks, such as detention due to criminalized status; that their confidentiality will be maintained; that they will have access to information; and that they will not be coerced into accepting services without consent.

Human rights are a set of legal rights that grow out of the basic equality and human dignity shared by all human beings. These rights can be found in international human rights treaties that set out the obligations that governments have to their citizens and to the international community. At the individual level, citizens are also required to respect the rights of others. The *International Guidelines on HIV/AIDS and Human Rights (2006*) assist countries in translating international human rights norms into practical observance in the context of HIV.

In accordance with states' obligations under these human rights standards, applicants to the Global Fund are encouraged to identify priority areas where measurable progress can be made to eliminate barriers to service access and ensure meaningful participation of people living with and affected by the three diseases.

Identifying critical enablers: programs to support human rights and basic HIV programs

Before drafting the concept note, applicants should identify these priority areas. To ensure that these are pragmatic and appropriate to the needs of affected communities, applicants should:

1. *Know the epidemic* – As part of concept note development, applicants are advised to conduct an analysis of the human rights and legal environment (including laws, law enforcement practices and access to justice by those affected by HIV) to identify whether and to what extent the social and legal environment creates vulnerability to HIV infection, and/or acts as an obstacle to HIV-related services.

   Of note are existing data on stigma (such as the PLHIV Stigma Index) and gender-based violence; laws that criminalize people who use drugs, sex workers and LGBT people; laws against components of harm reduction; compulsory drug detention centers; mandatory testing and treatment policies and practices; and involuntary sterilization of women living with HIV. Applicants may also wish to consult with human rights experts at UNAIDS, UNDP, UNFPA, UNODC, OHCHR and WHO; and with domestic, regional or global legal and human rights groups. The country report to the Human Rights Council Universal Periodic Review as well as any report by the UN Special Rapporteur on the Right to Health on the country may also be useful.

2. *Consult with representatives of PLWHA, women and key affected populations* – In identifying barriers and developing a plan to address them, applicants should ensure meaningful input through the country dialogue process of domestic networks or organizations that represent people living with and affected by the epidemic, such as: PLHIV; women and girls; men who have sex with men; transgender people; sex workers; people who use drugs; prisoners; migrants, refugees and other mobile populations; people with disabilities; and ethnic and linguistic minorities. Such consultation both helps to identify and design critical enablers, and

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[1] **Critical enablers** are "activities that are necessary to support the effectiveness and efficiency of basic programme activities." Schwartlander B et al. "Towards an improved investment approach for an effective response to HIV/AIDS." *Lancet*, 2011, 277:2031–2041. As UNAIDS and UNDP (2012) note, these programs "overcome major barriers to service uptake, including social exclusion, marginalization, criminalization, stigma and inequity."

creates local ownership and channels for communication that ensure such programs are fully implemented.

The *International Guidelines on HIV/AIDS and Human Rights (2006)* recommend that community consultation be formalized and occur in all phases of HIV policy design, program implementation and evaluation. Networks and groups that represent such communities should be included in the Country Coordinating Mechanism (CCM).

3. *Link critical enablers to basic programs* – Based on these consultations, applicants should identify critical enablers which address legal or policy barriers to services for which the applicant also requests support.

   For example, an applicant aims to increase the number of people who test for HIV, but learns through consultations with networks of PLHIV that HIV-related discrimination by health providers is discouraging people from being tested. The applicant may decide to create new policies on hospital discrimination, confidentiality and informed consent; hold trainings to sensitize health providers on these issues; and develop mechanisms to enforce the policy.

   In another example, an applicant who intends to procure and distribute condoms to sex workers learns that police use condoms as evidence of sex work, and that this makes many sex workers reluctant to carry and use condoms.[2] The applicant may decide to partner with the police or with legislators to end the use of condoms as evidence, and to sensitize them on HIV prevention.[3]

4. *Explore potential inter-sectoral partnerships* – Some critical enablers that address HIV-related human rights issues may be developed solely within health ministries, such as interventions addressing HIV-related discrimination by health providers. Others may require establishing relationships with another sector, including legislators, police, or the courts. Assessing the potential for productive partnerships with other sectors should be part of the consultation process. To a limited extent, Global Fund HIV investments may be directed at the inter-sectoral level, to address drawbacks in the State functions that adversely affect multiple sectors including health, and that consequently interfere with effective delivery of disease control programs.

5. *Assess needs for technical assistance:* Applicants should identify areas of human rights programming that require technical assistance. Since critical enablers to address HIV-related human rights issues may involve inter-sectoral partnerships and new areas of expertise, applicants should build technical assistance into funding requests in relation to designing, implementing, monitoring and evaluating these programs.

Note that human rights interventions relating solely to HIV should be included in concept notes requesting support for the HIV response. If the intervention will produce beneficial outcomes in the context of two or more diseases (such as a program aimed at improving prison conditions), it should be included in a funding request for health and community systems strengthening.

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[2] Open Society Foundations. *Criminalizing Condoms: How Policing Practices Put Sex Workers and HIV Services at Risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe.* 2012. Available at http://www.opensocietyfoundations.org/reports/criminalizing-condoms

[3] WHO. *Prevention and Treatment of HIV/AIDS and other sexually transmitted infections for sex workers in low- and middle-income countries.* 2012. Available at http://www.who.int/hiv/pub/guidelines/sex_worker/en/index.html.

Designing critical enablers to address HIV-related human rights issues

Once interventions have been identified, applicants should develop program plans that consider the following four activity areas:[4]

1. *Laws and policies*: If existing laws or policies create clear barriers to HIV interventions, then the first step may be either to reform those laws or policies, or to create the legal space for the effective roll-out of basic programs. Some activities in this area include consultations on law reform, drafting proposed laws and policies, policy advocacy, and monitoring the impact of laws on service uptake and adherence, among others.

   In many countries, there are protective laws and policies that are supportive of the HIV response. However, these may not be fully implemented, or people affected may lack access to legal aid services. In those contexts, applicants may focus on building capacity to implement laws and policies, and on access to justice programs, outlined below.

   In some countries, law reform is not feasible or law reform may take many years. While working on law reform, applicants may also develop programs to work with law enforcement officers to create legal space for biomedical interventions, or to ensure protection from violence.

2. *Training and capacity-building*: Programs in this area can include the following: a) Legal and human rights literacy for affected populations whereby these populations learn about their rights under international rights standards and domestic laws and policies. b) Sensitization of police and judges re HIV can result in their supporting, not hindering outreach programs for key populations. c) Training of health care workers in nondiscrimination, confidentiality, and informed consent. However, while training and capacity-building are important, training is likely to be most effective when combined with sound laws and policies that are reliably and fairly enforced.

3. *Access to justice programs*: In order for laws and policies to hold weight, they must be routinely and fairly implemented, and there must be routes to redress for those who suffer harm. Programs to increase access to justice for people living with and affected by HIV can include: legal information hotlines, community paralegals, training of traditional leaders in dispute resolution, and integrating HIV-related concerns into existing legal services. Other programs in this area may include sensitization on HIV for national human rights institutions, and establishing independent ombudsmen and complaint mechanisms (e.g. at hospitals).

4. *Monitoring*: Robust critical enablers to address HIV-related human rights should include development and implementation of systems for tracking, monitoring, investigating, and public reporting on the handling of complaints.

   Activities in this area may include monitoring and reporting by ombudsmen or tribunals; administrative complaints mechanisms; human rights investigations done by community-based organizations; legal or human rights databases; and submission of information, reports and shadow reports to UN human rights mechanisms.

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[4] The four areas outlined here incorporate the seven key programs that UNAIDS recommends for national HIV responses, appropriately tailored to the national and local epidemic:
   1. programs to reduce stigma and discrimination
   2. programs to sensitize law enforcement agents and law and policy makers
   3. HIV-related legal services
   4. programs to train health care workers in non-discrimination, confidentiality and informed consent
   5. programs to monitor and reform laws, regulations and policies relating to HIV
   6. legal literary programs (such as "know your rights/laws" campaigns, patients' rights)
   7. programs to reduce harmful gender norms and violence against women and increase their legal, social and economic empowerment in the context of HIV.

When preparing an HIV funding request, countries should explore where development synergies may already exist that aim to promote gender equality, to strengthen rule of law, accountability, access to justice, and human rights standards. For example, in a country that already has programs in existence that train judges in human rights standards, it would be advisable to add HIV, TB and Malaria-related components and the participation of affected communities to such training programs rather than to create a new program.

Additionally, the Global Fund continues to support programs to reduce stigma, including communications campaigns to educate the general public about how HIV is transmitted and that it can be prevented; and programs that employ people living with HIV and members of affected populations as agents of change. Such programs should be integrated into prevention interventions.

Further guidance on the design of critical enabler programs, including monitoring and evaluation, is included in the UNAIDS/WHO *Technical Guidance Notes for the Global Fund HIV Proposals* (2010).

Strengthening the evidence base for equitable and effective content and coverage of basic programs and critical enablers

The Global Fund recognizes that a strong evidence base will ensure sound programming in terms of coverage, content, costs and impacts of such programming. The Global Fund also recognizes that data can be scarce for some populations and issues. For example, in relation to girls and women, there is insufficient data on their needs in terms of programs to address their vulnerabilities to HIV infection and impact. In cases where evidence is poor, applicants can request support to strengthen the evidence base on key populations and on critical enablers to address HIV-related human rights issues as part of their funding request.

Ideally these activities should be planned for the first phase of grant implementation so that data generated can inform the later stages of investment. Applicants should seek input from marginalized or criminalized populations when designing data collection interventions in order to ensure that members of these populations are not put at risk and that adequate safeguards are established.

For better costing of the critical enablers mentioned in this Note, the UNAIDS Human Rights Costing Tool (HRCT) can be used to estimate the costs of implementing UNAIDS' seven key programs at the provider level and average service unit costs at national level. The tool has been developed to make the costing exercise automated, accurate, user-friendly and flexible to cover different configurations of activities.

Technical Guidance/Tools

- UNAIDS (2008), *Guidance Note: Addressing HIV-Related Law at National Level*: http://www.unaids.org/en/media/unaids/contentassets/documents/priorities/2008_GuidanceNoteLaw_en.pdf

- UNAIDS, UNDP and IDLO (2009), *Toolkit: Scaling Up HIV-Related Legal Services*: http://content.undp.org/go/cms-service/download/publication/?version=live&id=2652482

- UNAIDS and UNDP (2012), *Understanding and Acting on Critical Enablers and Development Synergies for Strategic Investments* http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/understanding-and-acting-on-critical-enablers-and-development-sy.htmlUNAIDS and WHO (2010), *Technical Guidance Note for Global Fund HIV Proposals – Reduction of HIV Stigma and Discrimination*: http://www.who.int/entity/hiv/pub/toolkits/HIVstigma_Technical_Guidance_GlobalFundR10_June2010.pdf

- UNAIDS and WHO (2010), *Technical Guidance Note for Global Fund HIV Proposals – Human Rights and Law*: http://www.who.int/entity/hiv/pub/toolkits/HRandLaw_Technical_Guidance_GlobalFundR10_June2010.pdf

- UNAIDS, *Guidance Note on Key Programmes to Reduce Stigma and Discrimination and Increase Access to Justice in National HIV Responses*, May 2012, available at:

- http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/Key_Human_Rights_Programmes_en_May2012.pdf

- UNAIDS Human Rights Costing Tool and its user guide: http://www.unaids.org/en/resources/presscentre/featurestories/2012/august/20120806hrct/.

- UNAIDS Guidance on Programmes to Reduce Stigma and Discrimination and Increase Access to Justice: http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/Key_Human_Rights_Programmes_en_May2012.pdf

- UNAIDS PCB Background Note: Non-discrimination: http://www.unaids.org/en/media/unaids/contentassets/documents/pcb/2012/20121111_PCB%2031_Non%20Discrimination_final_newcoverpage_en.pdf ; http://www.unaids.org/en/media/unaids/contentassets/documents/pcb/2012/20121116_PCB31_Thematic_Segment_Non_Discrimination_FINAL_Fr.pdf

Recent analysis of human rights in Global Fund-supported HIV programs with recommendations for applicants

- Global Fund (2012), Report of the Technical Review Panel and the Secretariat on the Transitional Funding Mechanism:

  http://www.theglobalfund.org/en/trp/reports/#TFM

- Global Fund (2010), *Analysis of Sexual Orientation and Gender Identity Related Activities in Round 8 and 9 Global Fund proposals:* www.theglobalfund.org/documents/rounds/9/Rnd8-9_Analysis_SOGI.pdf

- UNDP, UNAIDS and the Global Fund on HIV/AIDS, Tuberculosis and Malaria (2010) *Analysis of Key Human Rights Programmes in Global Fund-support HIV Programmes:*

  http://content.undp.org/go/cms-service/download/publication/?version=live&id=3107370

General references and international standards on health and human rights

- *International Covenant on Economic, Social and Cultural Rights*, http://www2.ohchr.org/english/law/cescr.htm

  - *The Right to the Highest Attainable Standard of Health, General Comment No. 14*, http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En

- Global Commission on HIV and the Law (2012), *HIV and the Law: Risks, Rights and Health* *http://www.hivlawcommission.org/index.php/report*

- Office of the UN High Commissioner for Human Rights/UNAIDS (2006), *International Guidelines on HIV/AIDS and Human Rights:* http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf

- *Report of the Secretary General on the Protection of Human Rights in the context of HIV and AIDS*, A/HRC/16/69 (2011): http://daccessods.un.org/access.nsf/Get?Open&DS=A/HRC/16/69&Lang=E