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ISSUE PAPER FOR THE SESSION:

Engaging donors in the protection and promotion of HIV-related human rights

Defining the Issue

1. Making human rights protection and gender equality a reality in the HIV response requires more than advocacy and standard-setting with regard to HIV and international and national human rights obligations. In the context of national responses, it requires a combination of political will, technical expertise and financial resources that turns human rights and gender equality into *programmatic* priorities that are costed, budgeted and implemented. In the context of international assistance and cooperation, it requires the development of human rights and gender commitment and capacity within bilateral and multilateral partners; willingness to examine and remove any barriers to human rights in aid machinery; and commitment to ensuring that sufficient funds are targeted funds towards the support of human rights, gender and law.
2. Yet in the HIV epidemic, the human rights community and UNAIDS have not yet developed a systematic or concerted strategy with which to engage donors on human rights issues in a way that would help to ensure the political and financial support for the programmatic responses that are necessary to protect human rights at the national level. There is need to do so, but a number of challenges exist. Among them are: (a) tension between country ownership of the HIV response and conditionalities imposed by the outside (donors and the UN); (b) different interpretations of human rights obligations and a framework of mutual accountability; (c) the role of a voluntarily-funded UN programme in the promotion and protection of human rights issues among donors; and (d) lack of capacity and practical strategies to ensure funding and support for human rights in national HIV responses.

Challenges to funding for human rights in HIV responses

3. Much of the recent support of UNAIDS to countries has focused on assisting them to strengthen national ownership, institutional capacity, and national funding for their HIV responses. This is not only necessary for effective and adequately funded national responses, it also is in line with the human rights principles of national responsibility, accountability, and self-determination. However, in many national responses to HIV, there has been insufficient political, funding and programmatic commitment to human rights and gender equality. Challenge: How do UNAIDS and donors deal with the tension between supporting country-led responses, and promoting leadership, funding and programming around “most neglected and contentious” issues, such as human rights and gender equality?
4. Though there is commitment to achieve alignment with national programmes, this does not mean alignment at a level that neglects or compromises human rights and gender equality. Indeed, it can be argued that donors, as well as UNAIDS, have an obligation to support recipient countries to protect and realize human rights in the context of their national HIV responses.¹ In a briefing paper

¹ It is increasingly posited that the obligation to respect, protect and fulfil human rights is not limited to the citizens of one's own country, including in the area of economic, social and cultural rights. One

produced by the Overseas Development Institute, UNAIDS noted that “Improved systems of *mutual accountability* are required to ensure that governments and donors undertake the required actions to meet previously stated commitments if Universal Access is to become more than the latest rhetoric emanating from the international AIDS community. (emphasis added)”² The Declaration of Commitment on HIV/AIDS (2001), the Political Declaration on HIV and AIDS (2006), and more broadly, the commitments made in human rights treaties entail “previously stated commitments” on HIV, human rights and gender equality. Challenge: How to ensure that human rights commitments form a part of the “mutual accountability” between developing countries and donors in the context of national responses to HIV?

5. As in any attempt to support the realization of human rights, there is often disagreement about the content of “mutual accountability” for human rights protection in the context of HIV, involving differing interpretations of human rights obligations among developing countries, and multilateral and bilateral donors. For example, some donors/governments think that the human rights of sex workers are to be recognized, extended and protected. Others think that, in order to protect human rights, all sex work should be eradicated and criminalization of sex work is a valid strategy by which to achieve this; and the same debate is mirrored in recipient countries.
6. UNAIDS is a cosponsored programme, has its own independent legal personality in the form of its Secretariat, and has a governing board comprised of representatives of its cosponsors, governments (donors and recipients) and non-governmental bodies. As a UN entity, the UNAIDS Secretariat has an inherent mandate and obligation to promote the protection and fulfilment of human rights. Over the years, UNAIDS has also promoted human rights because it believes that a rights-based response to HIV is an effective response to HIV. As the leader and coordinator of the response to the epidemic, UNAIDS also has an important role as a broker – bringing together stakeholders, engaging more players and those from many different perspectives, and building bridges of commitment and expertise. Being a successful broker is essential if the response to HIV is to be strong, sustainable, and sufficiently funded over time. Challenge: How and when does a voluntarily-funded agency with a brokerage role deal with donors and recipient governments who are not fulfilling human rights obligations? Navigating these sometime divergent roles – supporting mutual accountability for human rights and gender equality commitments, brokering partnerships, and fund-raising for the response and for itself – requires leadership, dialogue, strategic flexibility, support from the human rights community and others, and most important, direct responsiveness to the needs, rights and demands of those affected by HIV.

writer has asserted that extraterritoriality within international human rights law “concerns actions or omissions by one state that have an effect on the human rights of individuals in another state – with or without the other state’s agreement.” See Sigrun Skogly and Mark Gibney (2005), “Economic Rights and Extraterritorial Obligations”, conference paper presented at “Economic Rights: Conceptual, Measurement, and Policy Issues”, University of Connecticut, USA; 27-29 October 2005.

² Kent Buse, Michel Sidibe, Desmond Whymys, Ini Huijts and Steven Jensen (2006), *Scaling-up the HIV/AIDS Response: From alignment and harmonisation to mutual accountability*. Overseas Development Institute, London, at p.1.

http://www.odi.org.uk/publications/briefing/bp_aug06_hivscalingup.pdf

7. Finally, while lack of political will/agreement has been an impediment to prioritising human rights protection in HIV responses, so too has been lack of promotion of concrete human rights programmes, as well as strategies to cost and fund them. “Making the money work for human rights” requires that barriers to support and action on human rights are identified and removed in HIV and development aid machinery. It requires that UNAIDS and the human rights community be very clear about the nature and content of the rights-based programmatic responses that are needed, what it will take to cost and implement these, and how to go about getting financial support where it does not exist. It requires that civil society working on HIV become active and informed players in funding modalities that can provide support for human rights activities.
8. The UNAIDS Secretariat is considering the development of a tool that would help to develop capacity to apply for funding, as well as to provide funding, for human rights and gendered responses to HIV. The tool would target: (a) national programme personnel, AIDS-services organizations, and human rights groups to support them in applications for funding for rights-based responses to HIV, and (b) country-coordination mechanisms and donor review boards to support them in prioritizing funding for human rights/gender programmes, and in judging/awarding applications.
9. Even in a world of greater alignment with national AIDS programmes, the fact remains that donor policies and priorities have significant implications – positive and negative – for what national AIDS programmes prioritize and accomplish. The challenge is to engage donors on these issues towards successful outcomes within the context of the national priorities and human rights obligations of recipient countries, and in the context of donor obligations for human rights protection and promotion at home and abroad. This is necessary to make available the political support, funding and technical expertise to countries who do wish to implement rights-based responses to HIV, and to better encourage and support those who are not yet doing so.

Questions for discussion

- a) How can the UNAIDS and the human rights community better work with donors so that donors can become more engaged in supporting the protection and promotion of human rights and catalysing political will on these issues at national level?
- b) Is the development of a strategy on engaging donors for human rights support useful and necessary at this time? If so, what should the broad content of the strategy be and what tools should be developed by which to implement it?
- c) How can the UN system better support countries to generate demand for technical and financial support on programmatic responses on human rights and gender equality in their national HIV responses?

Supporting document

- Kent Buse, Michel Sidibe, Desmond Whyms, Ini Huijts and Steven Jensen (2006), *Scaling-up the HIV/AIDS Response: From alignment and harmonisation to mutual accountability*. Overseas Development Institute, London.
http://www.odi.org.uk/publications/briefing/bp_aug06_hivscalingup.pdf