

Statement on UNAIDS' human rights role regarding sexual orientation, gender identity and sexual practices between consenting adults

The UNAIDS Reference Group on HIV and Human Rights was established in 2002 to advise the Joint United Nations Programme on HIV/AIDS on all matters relating to HIV and human rights. The Reference Group speaks with an independent voice; thus, its views do not necessarily reflect the views of the UNAIDS Secretariat or any of the UNAIDS Cosponsors

This statement by the UNAIDS Reference Group on HIV and Human Rights is issued to commend the successful efforts by Ban Ki-moon, UN Secretary General; Michel Sidibé, UNAIDS Executive Director; Michel Kazatchkine, Executive Director of the Global Fund to fight AIDS, Tuberculosis and Malaria; and Navi Pillay, UN High Commissioner for Human Rights to urge the Government of Malawi to release Malawians Steven Monjeza and Tiwonge Chimbalanga, who had been sentenced to 14 years of imprisonment and hard labor for “carnal knowledge against the order of nature and gross indecency between males”.

We also commend the recently released Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health which focuses on the criminalization of HIV transmission, sex work and same sex sexual practices and its impact on health and human rights.¹

These efforts serve as positive examples of the critical and legitimate role of the United Nations in carrying out its duty to act quickly, consistently and strongly in defence of human rights violations that impact on HIV across the globe. In this context, the Reference Group affirms the mandate of the Joint UN Programme on HIV/AIDS (UNAIDS) to ensure that human rights and fundamental freedoms are promoted and protected in the context of the response to HIV, including with regard to the removal of punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV.

Given the pervasiveness of human rights violations and punitive approaches that undermine HIV responses, including on the grounds of sexual identity, gender orientation and/or sexual behavior between consenting adults, the Reference Group calls on UNAIDS and other actors in the UN system to redouble their efforts to address such violations through high level advocacy as well as support to programs to reduce stigma and discrimination and increase access to justice for those affected by HIV.

Building on its earlier statement on human rights related to sexual orientation in the context of HIV, principally non-discrimination, liberty, privacy, health and freedom from arbitrary arrest and detention², the Reference Group wishes to make it clear that the protection of human rights is not a discretionary matter for governments, nor should citizens need to be “pardoned” for their sexual orientation or gender identity. As the High Commissioner for Human Rights stated, this “is a question of fundamental rights, not one of geography, history or disparate cultures... The protection of individuals against discrimination is pervasive in international human rights law. Why should it be suspended for this one group of human beings?”³

Recognizing the adverse impact of the criminalization of consensual sex between adults on the HIV response, *the International Guidelines on HIV/AIDS and Human Rights* (UNAIDS/OHCHR), published in 1998, state that: “Anti-discrimination and protective laws should be enacted to reduce human rights

¹ A/HRC/14/20, 27 April 10; see report at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>

² See Reference Group statement of March 2010 on sexual orientation and human rights at the following link:

http://data.unaids.org/pub/Report/2010/20100322_rgstatementsexualorientation5mar2010_en.pdf

³ <http://www.un.org/apps/news/story.asp?NewsID=34768>

violations against men having sex with men, including in the context of HIV, in order, *inter alia*, to reduce the vulnerability of men who have sex with men to infection by HIV and to the impact of HIV and AIDS”.

The Reference Group believes that UNAIDS, as a part of the UN system, has a general mandate under the UN Charter and international human rights treaties and declarations, to promote and to hold States accountable to the human rights that States have agreed to realize and protect. Furthermore, UNAIDS should support States, and hold them accountable, to realize the specific commitments they have made on human rights and law in the context of the HIV response in the *Declaration of Commitment on HIV/AIDS (2001)* and the *Political Declaration on HIV/AIDS (2006)*; and finally UNAIDS should promote the human rights and the development of a legal environment (laws, law enforcement and access to justice) that are essential to provide effective HIV prevention, treatment, care and support.

In this regard, the Reference Group reaffirms its support for the UNAIDS *Joint Action for Results, UNAIDS Outcome Framework 2009-2011*, including the priority action areas calling for the “removal of punitive laws, policies, practices, stigma and discrimination that block effective responses to AIDS” and the empowerment of “men who have sex with men, sex workers and transgender people by ensuring they are empowered to both access and deliver comprehensive and appropriate packages of HIV prevention, treatment, care and support services and by ensuring that law enforcement agencies and the judicial system protects their rights.”

The Reference Group believes that the pervasive issue of stigma, discrimination, harassment, arbitrary arrest and detention, and violence against people on the grounds of their sexual orientation, their gender identity and/or their sexual practices including engaging in sex work, as consenting adults must be more visibly and consistently addressed at international level by those in the UN system. In this regard, UNAIDS should consistently denounce violations of human rights that take place on the basis of sexual orientation, gender identity and sexual practices between adults in private, including engaging in sex work, wherever they occur, as well as routinely raise the issue with national leaders, remind them of their human rights obligations in this regard and suggest rights-based approaches to issues as alternatives.

Finally, the Reference Group recognizes that discrimination on the basis of sexual orientation or sexual practices between consenting adults are not just issues of law and law enforcement, but also involve widespread prejudice and stigmatizing attitudes in many societies. While the links between human rights and the response to HIV have long been recognized, the UNAIDS Reference Group on HIV and Human Rights remains concerned that programs to reduce stigma and discrimination and increase access to justice for those affected by HIV continue to receive little attention, funding support or implementation.

Much greater resources and technical assistance should be made available to promote and support programs to reduce HIV-related stigma and discrimination among the public as well as among key service providers, in particular health care workers and police; “legal literacy” (knowledge of rights and laws) among those affected by HIV; and legal services and other programs to increase access to justice for those whose rights have been violated in the context of the HIV response. We believe strongly that “universal access” should not only refer to HIV prevention, treatment, care and support, but also to equality before the law, non-discrimination and access to justice. The Reference Group encourages all agencies within the Joint UN Programme on HIV/AIDS, as well as the Global Fund to Fight AIDS, TB and Malaria to strengthen their support of such programs.

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