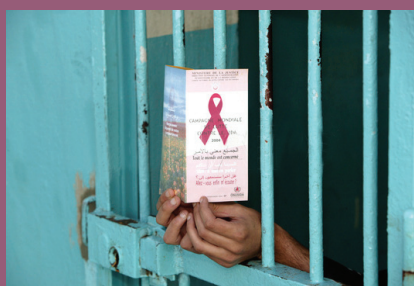


# Preventing and Responding to HIV Related Human Rights Crises



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# **Preventing and Responding to HIV Related Human Rights Crises**

Guidance for UN Agencies and Programmes

September 2014

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## Key points to remember before and during an HIV-related human rights crisis

- ▶ Keep up to date on local developments. Early warning is key.
- ▶ Be prepared: build relationships and plan ahead of a crisis for worst case scenarios.
- ▶ The first principle of any response is 'Do no harm'.
- ▶ The safety of United Nations staff is paramount. Consider the unique position and vulnerability of national staff.
- ▶ The first and only objective of a response to an HIV-related crisis involving danger to individuals or groups is to return those affected to a situation of safety and well-being.
- ▶ Establish clear processes of communication with United Nations and partner organizations, and ensure that responses are coordinated and that messages are consistent.
- ▶ Engage regional and HQ colleagues, but ensure that any actions are guided by the United Nations Country Team, affected communities, the country context and events on the ground.
- ▶ Carefully assess the risks and benefits of public versus private responses.
- ▶ Where possible, give the government prior notice of public United Nations statements or other actions.
- ▶ Be prepared to stand up publicly for the minimum human rights standards of access to HIV services and protection from violence, stigma and discrimination, while remaining a trusted broker and optimizing the United Nations' convening role.
- ▶ Support local champions and their efforts to find local solutions.
- ▶ Manage expectations about what the United Nations can and cannot do.
- ▶ Maintain confidentiality.
- ▶ Document all communications and actions.
- ▶ Ensure that affected individuals have necessary legal assistance and, where possible, that their family members and associates are out of harm's way.
- ▶ Never break the law.

# 1. Introduction

## 1.1 ABOUT THIS DOCUMENT

This document was developed in response to the increase in HIV-related human rights crises in recent years in countries around the world and the need for guidance for country-based United Nations (UN) staff in determining how best to respond to these events. It is based on a 2012 guidance note prepared by the UNAIDS Secretariat for its staff. This expanded guidance is primarily intended for members of Joint UN Country Teams on AIDS (UNAIDS co-sponsoring organizations, UNAIDS Secretariat and other relevant UN partners). It will also be of interest to staff members of other international organizations who are concerned about or may need to contribute to a crisis response, such as international donors/development partners, representatives of foreign diplomatic missions and civil society groups. The guidance document aims to:

- help country staff to anticipate and prepare for an HIV-related human rights crisis through the development of a crisis response plan;
- provide guidance on key principles and options for action by country staff as they assess the nature of the crisis and determine whether, how and with whom they should work to respond;
- promote coordinated crisis responses on the part of the UN and other relevant actors, in the country and at regional and Headquarters (HQ) levels; and
- promote understanding about the nature and scope of the UN's role in an HIV-related human rights crisis.

This guidance was developed by Ian Grubb on behalf of UNDP's HIV, Health and Development Group in consultation with Tania Fidalgo. Drafts of this document were reviewed by several UNDP regional and country staff, members of the UNAIDS Interagency Working Group (IAWG) on Punitive Laws including representatives from UNFPA, UNODC, UNESCO, ILO, UNICEF, UNHCR, the UNAIDS Secretariat and the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund).

The document is structured as follows:

- The remainder of **Section 1** provides a definition of when a crisis may be HIV-related and the two types of crisis that frequently arise.
- **Section 2** describes the rationale for and grounds on which UN agencies may respond to HIV-related human rights crises.
- **Section 3** describes steps that can be taken in advance to prepare for a human rights crisis, emphasizing the importance of building relationships in the country, the role of a crisis response team and focal point, and the importance of country-level control of the response.
- **Sections 4 and 5** discuss the two specific types of crisis that may arise in the context of HIV, highlighting issues that should be considered in assessing the crisis and potential actions that could be taken in response.
- **Section 6** provides several illustrative examples of HIV-related human rights crisis that have arisen in recent years, and recounts the UN response to them.

## BOX 1: HIV and human rights

Three decades of experience have shown that the promotion and protection of human rights is essential for preventing HIV transmission and reducing the impact of HIV and AIDS. Human rights-based approaches and protective and enabling legal environments reduce vulnerability to HIV, ensure that HIV prevention, treatment and care are accessible for those at higher risk, and enable affected communities to participate in planning and implementing effective interventions. In contrast, laws that criminalize HIV transmission, sex between men, sex work and drug use or that fail to protect the rights of people living with HIV, women, children and young people vulnerable to HIV are major barriers to accessing HIV services and interventions, reinforcing stigma and discrimination and hindering effective grassroots responses to the HIV epidemic.

In 2001, all UN Member States committed to strengthening legal and policy frameworks with the objective of eliminating stigma and discrimination against people living with HIV and vulnerable groups and ensuring the full enjoyment of their human rights and their equal access to education, health care, employment, social services and legal protection. Such approaches were affirmed in subsequent Political Declarations on HIV/AIDS in 2006 and 2011.

The right to health implies that health services, goods and facilities must be provided to people living with or vulnerable to HIV without any discrimination. They must be available, accessible, acceptable and of good quality. Education needs to be accessible, of good quality and take into account the specific needs of those living with HIV. The right to employment and social services implies no discrimination on the grounds of the real or perceived HIV status, along with the promotion of equality of opportunity and treatment. People living with or vulnerable to HIV should be protected against any violations of their rights and get access to justice to claim their rights.

While some progress has been made in these areas in the last decade, criminalization, discrimination, punitive law enforcement practices, human rights abuses and failure to enforce protective laws continue to undermine the response to the HIV epidemic in many countries.

## 1.2 WHAT IS A HUMAN RIGHTS CRISIS IN THE CONTEXT OF HIV?

This document considers two broad types of HIV-related human rights crises:

- **A human rights crisis involving individuals, groups or organizations:** Such a crisis usually involves actions such as harassment, surveillance, detention, disappearance, abuse, blackmail, discrimination, physical violence or threats targeted against individuals, groups or organizations affected by or working in HIV that endanger their safety and well-being. Those affected may be people living with HIV or members of key population groups,<sup>1</sup> their families or associates, or people or organizations who promote or provide HIV prevention, treatment, care and support services to these groups. Such a crisis may be characterized as ‘acute’ and may warrant urgent and immediate action, potentially followed by longer-term efforts to ensure that such crises do not recur.

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1 This term describes populations disproportionately affected by HIV when compared with the general population. While these populations may vary according to the dynamics of the local epidemic, the term principally refers to gay men and other men who have sex with men, people who use drugs, sex workers and transgender people. Depending on the local context, other populations such as prisoners, persons with disabilities, migrants, mobile populations, women or children may also be vulnerable to human rights violations and at increased risk of HIV infection.



- **A human rights crisis involving laws, policies or programmes:** Such a crisis may involve existing or emerging laws, policies, practices or programmes that jeopardize or hinder an evidence-informed, rights-based response to HIV. Examples include laws or practices that criminalize the behaviours of key populations or their organizations, or that comprise barriers to their access to HIV prevention, treatment, care or support services; laws or practices that allow testing, treatment or other medical interventions without informed consent or confidentiality; laws, policies or practices that allow detention without due process; laws or practices that fail to protect against gender-based violence and gender inequality in the context of HIV; and overly broad criminalization of HIV transmission. Such a crisis may be characterized as reflecting ‘chronic’ issues in the country that require concerted attention over an extended period of time.

These two categories of crises are not mutually exclusive, and may occur at the same time. **Both** types of crises may involve:

- controversial issues or sensitive information, such as sexuality, sexual behaviour, gender identity, sex work or drug use, or confidential medical information, such as HIV or other health status, the disclosure of which could cause harm to individuals or groups;
- national and international media attention that will need to be carefully managed; and
- the need for UN organizations and other partner agencies to uphold and defend core human rights principles, sometimes in difficult circumstances, and to support UN Member States to meet their human rights obligations. As such they should respond by denouncing the action which has led to the crisis and/or intervene to mitigate its impact.

### 1.3 WHEN IS A HUMAN RIGHTS CRISIS HIV-RELATED?

A human rights crisis may be considered HIV-related when:

- it directly involves people living with or affected by HIV or AIDS, key population groups and/or individuals or group/organizations advocating on their behalf or that promote or provide HIV prevention, treatment, care and support; and/or
- it creates, perpetuates or increases vulnerability to HIV infection among individuals or groups, or has the potential to do so; and/or
- it jeopardizes or hinders an effective national or local HIV response, including access to HIV-related prevention, treatment, care and support services for people who need them, or has the potential to do so.

Examples of HIV-related human rights crises are provided in Sections 4, 5 and 6. The final determination on what constitutes an HIV-related human rights crisis should be made by senior UN staff in the country, in consultation with colleagues on the crisis response team, regional offices and HQ and local civil society groups, including groups representing the key populations affected by the crisis.

This paper does not directly address ‘humanitarian crises’ in the context of political unrest, conflict or natural disasters, although there may be occasions when such crises also affect access to HIV-related services and thus may warrant a coordinated UN response. One example is in the case of restrictions placed on access to methadone in Crimea in the first half of 2014 as a result of its annexation into the Russian Federation.

## 2. Grounds for UN Staff to Respond to Hiv-Related Human Rights Crises

When an HIV-related human rights crisis arises, there is likely to be a great need and significant demand for the Joint United Nations Programme on AIDS (UNAIDS) and other local and international partners to respond effectively and quickly. Grounds for action by the UN may be found in the following:

### 2.1 HUMAN RIGHTS MANDATE OF THE UNITED NATIONS

The responsibility to integrate human rights into the work of UN agencies and programmes is a principal purpose of the entire UN family of organizations, as Article 1 of the Charter of the United Nations states that the purposes of the UN include “To achieve international co-operation... in promoting and encouraging respect for human rights and for fundamental freedoms for all...” The entire UN system has the responsibility to act to promote and protect the universal and inalienable human rights of all people. These responsibilities derive from the Charter of the United Nations, the Universal Declaration of Human Rights, international and regional human rights treaties, international labour standards, the Special Procedures of the UN Human Rights Council, UN reform commitments to mainstream support to human rights throughout the work of the UN system, and the Standards of Conduct for the International Civil Service.<sup>2</sup> Special Rapporteurs appointed by the UN Human Rights Council also have mandates to report on specific subjects, such as rights violations in specific countries, including the right to health, the right to food, and the use of torture, violence and discrimination against women and children.

“We (the UN system) are all duty-bound to uphold the norms and standards and principles of the UN and the international system so painstakingly built up over the course of the last 60-plus years. This includes the standards and principles of human rights. What is the proper role of the international community in the face of national (or international) policies and practices that violate or undercut internationally guaranteed human rights and fundamental freedoms? What are the moral and legal parameters of our cooperation? Here, we all agree that our duty to Governments cannot include a requirement to turn a blind eye to injustice and abuse. Rather... the standard of engagement with all Governments, rich and poor, north and south, must be the same in all circumstances: principled, norm-based, constructive engagement.”

—Statement by Navi Pillay, UN High Commissioner for Human Rights,  
to the UN Chief Executive Board, October 2011

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2 Paragraph 3 of the Standards Of Conduct states: “The values that are enshrined in the United Nations organizations must also be those that guide international civil servants in all their actions: fundamental human rights, social justice, the dignity and worth of the human person and respect for the equal rights of men and women and of nations great and small.”

## 2.2 THE JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS (UNAIDS)

UNAIDS has a specific responsibility to promote human rights-based responses and to address human rights violations that increase vulnerability to HIV. This responsibility is derived from the UNAIDS mandate in ECOSOC Resolution 1994/24 that established UNAIDS to catalyse and support a global response to HIV through “appropriate and effective policies and strategies”. Rights-based approaches are an integral element of the response to HIV (See Box 1) and a component of the UNAIDS strategy.<sup>3</sup> Accordingly, staff of the UNAIDS co-sponsoring organizations and Secretariat are obliged to ensure that programmes, laws, policies and practices promote rights-based approaches and do not hinder an effective HIV response.

### *Division of labour among UNAIDS co-sponsors and the UNAIDS Secretariat*

The specific mandates of individual UNAIDS co-sponsoring organizations and the division of labour between them (see Table 1) also provide grounds for action in response to an HIV-related human rights crisis.

**TABLE 1. Division of labour among UNAIDS co-sponsors and the UNAIDS Secretariat**

Division of labour area	Convener(s)	Agency partners
Reduce the sexual transmission of HIV	<b>World Bank, UNFPA</b>	World Bank, UNFPA, WHO, UNDP, UNHCR, UNICEF, ILO, WFP, UNESCO
Prevent mothers from dying and babies from becoming infected with HIV	<b>WHO, UNICEF</b>	WHO, UNFPA, UNICEF, WFP
Ensure that people living with HIV receive treatment	<b>WHO</b>	WHO, UNHCR, UNDP, UNICEF, WFP, ILO
Prevent people living with HIV from dying of tuberculosis	<b>WHO</b>	WHO, UNICEF, WFP, ILO, UNODC
Protect drug users from becoming infected with HIV and ensure access to comprehensive HIV services for people in prisons and other closed settings	<b>UNODC</b>	UNODC, WHO, UNICEF, UNDP, World Bank, UNFPA, UNESCO
Empower men who have sex with men, sex workers and transgender people to protect themselves from HIV infection and to fully access antiretroviral therapy	<b>UNDP, UNFPA</b>	UNDP, World Bank, UNFPA, WHO, UNESCO, ILO
Remove punitive laws, policies, practices, stigma and discrimination that block effective responses to AIDS	<b>UNDP</b>	UNDP, UNFPA, UNODC, UNESCO, WHO, UNICEF, UNHCR, ILO
Meet the HIV needs of women and girls and stop sexual and gender-based violence	<b>UNDP, UNFPA</b>	UNDP, UNICEF, UNFPA, WHO, WFP, UNODC, UNESCO, UNHCR, ILO
Empower young people to protect themselves from HIV	<b>UNICEF, UNFPA</b>	UNICEF, WFP, UNHCR, UNFPA, UNESCO, ILO, WHO
Enhance social protection for people affected by HIV	<b>UNICEF, World Bank</b>	UNICEF, WFP, UNDP, World Bank, WHO, ILO, UNHCR
Address HIV in humanitarian emergencies	<b>UNHCR, WFP</b>	UNHCR, WHO, UNFPA, WFP, UNODC, UNICEF, UNDP
Integrate food and nutrition within the HIV response	<b>WFP</b>	WFP, WHO, UNICEF, UNHCR
Scale up HIV workplace policies and programmes and mobilize the private sector	<b>ILO</b>	UNESCO, WHO, ILO
Ensure high-quality education for a more effective HIV response	<b>UNESCO</b>	UNESCO, UNFPA, ILO, WHO, UNICEF
Support strategic, prioritized and costed multisectoral national AIDS plans	<b>World Bank</b>	World Bank, UNESCO, WHO, WFP, UNDP, UNHCR, UNODC, UNFPA, ILO, UNICEF

3 UNAIDS, ‘Getting to Zero’, UNAIDS, Geneva, 2011–2015. The three pillars of the strategy are prevention, treatment, and gender-equality and human rights.

## 2.3 MANDATES AND INTERESTS OF OTHER ORGANIZATIONS

A number of international and regional bodies and mechanisms are also required by their mandates and expertise to respond to human rights crises, including HIV-related crises. These include the Office of the High Commissioner for Human Rights (OHCHR), the Special Procedures of the UN Human Rights Council and regional human rights bodies, where they exist.

The first accountability lies with the State—and its commitment to upholding its obligations. Organizations outside the UN system may also decide to participate in a response to an HIV-related human rights crisis on the basis of their missions or mandates, as in the case of **donors** and **non-government organizations** (NGOs) involved in human rights and/or that represent and advocate for the rights of key populations. Similarly, **foreign diplomatic missions** may wish to ensure that host countries uphold their international human rights obligations, and major donors will be concerned to ensure that their funding for HIV programming supports rights-based responses and does not inadvertently contribute to rights violations.

In 2012, the **Global Fund** explicitly committed to a corporate strategy that involves: 1) integrating human rights considerations throughout its grant cycle; 2) increasing investments in programmes that address human rights-related barriers to access; and 3) ensuring that the Global Fund does not support programmes that infringe human rights.<sup>4</sup> In 2014, the Global Fund is establishing a human rights risk framework that will be applied across grants, and its Inspector General is establishing a mechanism for the anonymous reporting of human rights violations.

The **US President's Emergency Plan for AIDS Relief** (PEPFAR) has also expressed a strong commitment to gender equality, ending stigma and discrimination against people living with HIV and key populations and improving their access to, and uptake of, comprehensive HIV services.<sup>5</sup>

There are a range of other influential funders relevant to responding to HIV-related crisis. For example, the 18 donor countries which form the Multilateral Organisation Performance Assessment Network (MOPAN) have a common interest in assessing the organisational effectiveness of the major multilateral organisations they fund.[1] The assessment of results focuses on the degree to which progress is being made towards the organisations stated objectives, which often includes an assessment of how human rights have been addressed as an integral component of across the work of the organizations concerned.

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<sup>4</sup> Global Fund, 'The Global Fund Strategy 2012–2016: Investing for Impact', Global Fund, Geneva, 2012.

<sup>5</sup> PEPFAR, 'PEPFAR Blueprint: Creating an AIDS-free generation', PEPFAR, Washington, DC, 2012.

### 3. Being Prepared through Relationships and Planning

Responses to any crisis are considerably more effective if the groundwork for such a response is laid well in advance and is based on a clear understanding reached between all relevant local stakeholders. This section discusses two key steps in preparing for a potential response to an HIV-related human rights crisis: 1) the importance of building relationships with government officials, local authorities, civil society and other stakeholders; and 2) establishing a crisis response team and focal point.

#### 3.1 BUILDING RELATIONSHIPS WITH LOCAL AUTHORITIES AND STAKEHOLDERS

As part of their daily work as members of the UN Country Team, members of UN country staff should cultivate ongoing, constructive relationships with relevant government agencies and personnel, as well as other local groups and organizations, especially human rights organizations and organizations of people living with or affected by HIV and AIDS. Building and maintaining these relationships is critical to provide early warning of a potential crisis so that steps may be taken to either avoid the crisis altogether or to contribute to its effective resolution.

##### *Government ministries and other national authorities and organizations*

The types and extent of relationships developed by UN country staff will depend to a large degree on the mandate of the particular organization. For example, staff of UNAIDS co-sponsoring agencies and the UNAIDS Secretariat and staff of bilateral and multilateral donors to the national HIV programme should have strong relationships with the National AIDS Commission (where it exists and is functional in the country), Ministries of Health and other ministries and agencies relevant to HIV, human rights and gender. The scope of these relationships may be very broad, and will depend on the capacity of the various country offices and the country context. While not exhaustive, core relationships of individual co-sponsors and UNAIDS Secretariat are likely to include the following:

- **WHO:** Ministry of Health; National AIDS Commissions; national medicines regulatory authorities and procurement agencies, health worker unions or professional associations
- **UNDP and UNODC:** Ministry of Justice, Interior or Home Affairs; Ministry of Health; law enforcement authorities, including national drug control agencies, police departments, the judiciary and prison authorities; National AIDS Commission, national human rights bodies or ombudsman, relevant professional associations or trade unions (e.g. judiciary, lawyers, police, prison officers)
- **UNESCO:** Ministry of Education; key educational institutions such as major schools and universities; national associations or unions of teachers and educators
- **ILO:** Ministry of Labour; labour administration authorities; labour inspectorates; judicial authorities, particularly industrial and labour courts; national and international employers' and workers' organizations; National AIDS Commissions; national chambers of commerce, key industry groups; and civil society organizations

- **UNICEF, UNFPA and UN Women** may have a wide range of relationships across government, including Ministries of Health, Women's Affairs, Economic Development, Interior and Social Welfare; child and social protection agencies; human rights institutions and professional associations/trade unions, including health care, teachers and social service providers; local mayors and municipal officials; and human rights organizations and organizations of people living with/affected by HIV and AIDS
- **World Bank:** Ministries of Finance, Economic Development and Health; national financial regulatory authorities, Central Bank, Chambers of Commerce or key industry groups; professional associations
- **WFP:** Ministries of Health and Economic Affairs; national humanitarian relief agencies
- **UNHCR:** Ministries of Foreign Affairs, Immigration and Justice; and health and humanitarian relief agencies
- **UNAIDS Secretariat:** has a wide range of relationships with national stakeholders as part of its leadership and coordination function, including with National AIDS Commissions, line ministries, political leaders, civil society, communities and the private sector.

Staff of UNAIDS co-sponsors, the UNAIDS Secretariat and other international organizations may also build relationships with Members of Parliament and their staff who are influential in determining national laws and policies in areas relevant to their agency's mandate, members of the judiciary and law enforcement agencies.

**Major donors** are also likely to have built extensive relationships within the country. As part of the US diplomatic presence in countries, staff involved in PEPFAR implementation will have access to contacts across government sectors and with civil society groups. Global Fund staff, while not based in-country, will also have close relationships with Ministries of Health, National AIDS Commissions, UN agencies, civil society and other organizations represented on Country Coordinating Mechanisms, and Principal Recipients and Sub-Recipients of Global Fund financing. Other donors including the 18 countries who constitute the Multilateral Organisation Performance Assessment Network are likely to have a country presence, a good working knowledge of the legal system in country and contacts with relevant government and civil society stakeholders.

Building relationships with government officials and agencies may be undertaken through regular courtesy calls, periodic visits and invitations to key events to explain and provide updates on the HIV-related work being undertaken in the country, and to ensure that the local officials understand the international organization's perspective, including human rights, ethical and legal issues related to HIV. The local officials should be encouraged to recognize that international agencies will be working, frequently within the UNAIDS partnership, with a wide range of ministries and partners to ensure that human rights and legal issues related to HIV are adequately addressed.

In interactions with government officials, the HIV-related mandate of the Joint UN Programme on HIV/AIDS and/or the specific UNAIDS co-sponsor should be explained in the widest possible terms—i.e. it should cover all matters relating to the health, dignity and security of people living with and vulnerable to HIV infection, and all matters affecting the response to HIV. It should be made clear that an effective HIV response involves not only health issues but also the development and implementation of enabling legal and policy environments, addressing issues such as stigma, discrimination, civil and criminal law, migration and asylum, prisons, disability,



trade and intellectual property. Reference can be made to relevant language on human rights and law in the Declaration of Commitment on HIV/AIDS (2001) and the two Political Declarations on HIV/AIDS (2006, 2011). Staff of international organizations should also use these opportunities to learn about and understand the views of government officials with regard to the social, economic, cultural and political affairs of the country. Building these relationships and ensuring mutual understanding will be important for acceptance by government officials of the need for international organizations to become engaged in the event of an HIV-related human rights crisis.

As part of these interactions, international organizations should aim to achieve—in a professional, straightforward and courteous manner—an understanding on the part of government officials about the actions that they may take in the event of a crisis. For example, UNAIDS co-sponsors, the UNAIDS Secretariat and/or UN Country Team may find it necessary or appropriate to speak out publicly and/or issue a public statement regarding a human rights situation in the country. However, staff of international organizations should make it clear that this will not occur without their senior officials first seeking to meet with appropriate officials of the government and/or sending a written, confidential *demarche* as part of efforts to resolve the matter, prior to going public. If these private efforts fail, the government will be informed in advance of any public actions that the international organizations intend to take, so that the government is not caught off-guard. Such an approach is generally appreciated and respected.

### *Civil society*

Local civil society groups and organizations are critical partners in the HIV response, and all international organizations working at country level should work to cultivate close and effective relationships with them, especially groups and networks that represent people living with HIV and key populations, HIV treatment advocates, employers' and workers' organizations, and HIV-related women's and human rights groups. Members of civil society should be able to turn to UNAIDS co-sponsoring organizations and/or the UNAIDS Secretariat and other international organizations: 1) to seek support for their own advocacy efforts; 2) to obtain access to a variety of platforms from which they can speak; and 3) to be convened in safe spaces for constructive dialogue with government, parliament and law enforcement officials on relevant issues.

Civil society groups can play a particularly important role as the 'eyes and ears' of international organizations by monitoring and providing information about human rights and other legal and social affairs in the country. International organizations should have regular meetings with civil society partners to discuss the range of issues relevant to the HIV epidemic, including human rights and legal issues. A best practice is for the UN Country Team to convene monthly or bi-monthly meetings with relevant civil society groups for information-sharing and strategy discussions, including strategies to manage potential crises related to HIV.

Technological innovations, when applied appropriately, may be used to mobilize support and monitor and respond to human rights violations. UReport, an initiative to mobilize youth in Uganda, equips mobile phone users with the tools to establish and enforce new standards of transparency and accountability in development programming and services. International NGOs and civil society groups may also be potentially important partners due to their expertise, broad networks, and ability to highlight rights violations and provide support in the event of a crisis.

UN and other international organizations should also foster relationships with faith-based organizations and with the media, including key journalists, which can be critical in shaping public opinion and government action. At times, these organizations may hold or express views about responses to HIV that are different from those of the international organizations in the country or that are hostile to groups affected by HIV. Pre-existing relationships of openness and trust may, therefore, facilitate the management of such differences in the event of a human rights crisis.

### *Foreign diplomatic missions*

Foreign diplomatic missions accredited in the country are also potential stakeholders and allies of international organizations, especially when they are providing support to the national HIV response. Frequently, foreign missions may participate in a joint working group to monitor and discuss human rights issues in the country. Selected missions may be key sources of information and insight on the situation at country level, and in many countries exert significant influence on national decision-making. However, it will be necessary to assess which missions to engage, and on which issues. This can be done through courtesy calls, periodic updates and invitations to HIV- and human rights-related events.

### *Managing expectations about the role of UN organizations*

An essential part of building relationships with government, civil society and other relevant stakeholders is to manage expectations about what the UN can and cannot do in the event of a human rights crisis.

In essence, UN organizations should always bear in mind their mandate to promote and protect human rights in the context of effective national HIV responses. Their role is both to support governments to respect and protect the rights of people within their territories or under their effective control, so that they are better able to prevent HIV transmission and access HIV-related treatment and care services, and also to provide support that helps civil society groups to understand and assert their human rights in the context of HIV.<sup>6</sup> While UN organizations do not ‘take sides’, they should actively seek to promote and protect human rights, including the rights to health, education, privacy, freedom of association and expression, due process, freedom from arbitrary arrest, and protection from discrimination, violence and harm. Civil society should be able to depend on the willingness and ability of the UN to speak out (either publicly or behind the scenes) for the protection of human rights, and governments should clearly understand that UN organizations have a responsibility to do so.

## **3.2 PLANNING FOR A CRISIS RESPONSE**

UN and other international organizations working in HIV in the country should ensure that any response to an actual or potential human rights crisis is well coordinated. This involves reaching a clear understanding and agreement about how and to whom concerns about human rights issues should be communicated, under what circumstances, who should be involved in

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<sup>6</sup> This role is adapted from the UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming adopted in 2003. Available at <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>.



the response, what options are available and what considerations should be borne in mind, especially in the early phase of a crisis.

Establishing a **crisis response team** in advance of a crisis can allow these issues to be addressed effectively. Membership of such a team will depend on the country's specific context, but should typically include senior staff from organizations represented on the UN Country Team, including relevant UNAIDS co-sponsors and the UNAIDS Secretariat. While not all co-sponsors may need or wish to be involved in the crisis response, they should be kept informed of the team's composition, communications channels, protocols and actions. Non-UN organizations should be engaged where appropriate. To the extent possible, existing mechanisms within the UN Country should be employed in responding to a crisis.

Due to its specific responsibilities under the UNAIDS division of labour and its role as the manager of the Resident Coordinator system, UNDP should be a core member of any such team and will frequently be well positioned to act as focal point or coordinator of the team. However, other UNAIDS co-sponsors or the UNAIDS Country Director may also assume this role, depending on capacity and the country context.

### *Responsibilities of the crisis response focal point*

The responsibilities of the focal point should include:

- assessing the nature, scope, level and effectiveness of the response (if any) by national authorities to the HIV-related human rights crisis, and in coordination with members of the crisis team or relevant UN staff, determine whether and how the UN should engage on addressing the crisis;
- providing a confidential communications channel to receive reports about human rights issues and concerns that arise in the country;
- developing an email communications list of organizations/individuals that should be kept informed about an emerging human rights crisis;
- convening the crisis response team and taking the lead in coordinating the response of the UN and other international organizations at country level;
- ensuring that all UN and other relevant international staff in the country are aware of the crisis and the planned response;
- ensuring that all UN and other relevant international staff in the country are safe, in collaboration with UN Security;
- informing and working with the Resident Coordinator, UNDP, UNAIDS co-sponsors and UNAIDS Secretariat as appropriate, based on the UNAIDS division of labour;
- informing and working with the UNAIDS Regional Support Team and HQ, and/or counterparts of other UN organizations, where appropriate, to: 1) determine what political, technical or financial support is needed at the country level to implement the response; and 2) whether action beyond the country level is appropriate;
- seeking the regular input of affected communities when devising the response;
- contacting, as appropriate, allies and partners that may be able to help with the situation, such as the Ministries of Health and Justice, police, national human rights institution,

NGOs, religious leaders, OHCHR, UNHCR, regional human rights organizations, foreign diplomatic missions and major donors;

- sharing information with other organizations if it is determined that this will help, rather than harm, the response. It should be noted that cases involving individuals often require greater care and attention to confidentiality than cases involving laws, policies or practices; and
- ensuring that appropriate support, such as legal advice and assistance, will be on standby in the event of a crisis.

Agreement and clear communication among the members of the crisis response team and other relevant partners about these roles and responsibilities will facilitate a prompt and effective crisis response and reduce the potential for miscommunication, misunderstanding and uncoordinated efforts and messaging at a time when events move rapidly and decisions must be taken quickly.

### 3.3 DETERMINING WHO SHOULD RESPOND

One of the first considerations in any crisis will be to determine who the ‘first responder’ to the crisis should be. First responders are those with the primary responsibility to address a human rights crisis in the first instance.

The government always has the first and primary obligation to respond to any crisis in a way that protects human rights and is based on the rule of law. The first priority of the UN is, where possible, to support the government to do the right thing on these terms. In cases where the government can be considered to have precipitated or contributed to the crisis and/or impedes its effective resolution, other institutions at the national level may act as ‘first responders’, such as a national human rights commission or Ombudsman. UN staff should always engage with such bodies before determining their own course of action.

International and regional bodies and mechanisms with human rights mandates and expertise, such as OHCHR, the Special Procedures of the UN Human Rights Council, the Committee on Rights of the Child and regional human rights bodies, may also wish to respond to the crisis, particularly where they have a presence in the country, and should be consulted before any course of action is pursued.

Some co-sponsors have strong regional offices that may appropriately play an important intermediary role between the country and the HQ office, both in helping to determine who should respond to the crisis and helping to shape the response.

In short, the local context, local institutions and presence of other international organizations with human rights responsibilities will determine who should act as first responder, and the Joint UN Country Team, individual UNAIDS co-sponsors and UNAIDS Secretariat may not necessarily act as ‘first responders’. However, if the situation is HIV-related, **the Joint UN Programme on HIV/AIDS as a whole has an obligation: 1) at a minimum, to ensure that an appropriate body is responding adequately; and 2) where necessary, to take the lead if others are unable or unwilling to respond.**

### 3.4 ENSURING THAT THE RESPONSE IS BASED ON THE COUNTRY CONTEXT

Country-level considerations should always inform and shape the response to the crisis, and UN/international staff based in the country should lead, shape and control the UN response to it, in close collaboration with civil society, the affected communities and their family members. This is because staff at country level are typically in the best position to fully appreciate and assess the political, legal, cultural and security situation. Moreover, they will have to manage the consequences of any actions taken by the UN and its partners in the country. The priority of regional and HQ offices is to support staff working in the country to perform this role, and they should avoid asserting control over the situation or exerting pressure on country staff to adopt a particular course of action. There may be exceptions to this in situations where: 1) the responsible UN staff member is a national officer and faces possible security concerns if s/he is associated with the crisis or is accused of 'taking sides'; or 2) staff at country level view it as more appropriate, based on a sound assessment, that the lead be taken by HQ and/or a regional office. In such cases, regional and HQ staff should ensure that country colleagues and affected individuals and communities are safe before taking the lead.

Any response should preferably be undertaken collectively with local partners, including members of the crisis response team, and others as appropriate. The UN Resident Coordinator and relevant UNAIDS co-sponsors should be informed, based on the UNAIDS division of labour, and work together towards a coordinated response by the UN Country Team, while taking care to maintain any necessary confidentiality. UN country-level staff should also inform their regional and HQ colleagues, including those responsible for human rights and law. As the UNAIDS convener on punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV, UNDP should always be informed and closely engaged. If the OHCHR has a presence in the country, it should be informed and brought into consideration as a key partner. OHCHR or UNAIDS Secretariat HQ can also ensure that the UN Special Procedures are engaged, if necessary, on a confidential basis.

## 4. Responding to Human Rights Crises Involving Danger to Individuals, Groups and Organizations

### 4.1 WHAT TYPES OF HIV-RELATED CRISIS COULD ARISE?

An HIV-related human rights crisis involving danger to individuals, groups or organizations will typically involve action taken against people living with HIV, members of key population groups, or people who promote or provide HIV prevention, treatment, care and support services, that threatens their safety or well-being. The following lists, while not exhaustive, provide examples of the types of crises that may be faced by specific groups.

#### ► People living with HIV

- Stigma, discrimination, harassment or violence, denial of services, actual or threatened violence, surveillance, detention, arrest for actual or suspected transmission of HIV with or without disclosure of status, denial of work or social security benefits, unjust dismissal, media exposure or vilification, breaches of confidentiality and medical procedures—including testing—without informed consent

#### ► Sex workers

- Denial of medical and government services and benefits
- Discrimination, violence or harassment (e.g. by police or other uniformed officers, clients, third parties, family members, gang members, health service providers, the media)
- Extortion (e.g. by police, third parties, gang members, clients and other sexual partners)
- Arrest or detention without legal grounds/due process
- HIV testing or other medical procedures without informed consent

#### ► People who use drugs

- Discrimination, harassment or verbal/physical abuse (e.g. by government officials, health care providers or police)
- Arrest and detention without legal grounds/due process
- Coercion into unpaid sex work
- Sexual violence and abuse
- HIV testing or other medical procedures without informed consent
- Denial of medical and other government services, including in prison settings
- Forced sterilization of women and forced abortion for women who use drugs
- Death penalty for drug offences

► **Men who have sex with men; lesbian, gay, bisexual or transgender people**

- Stigma, discrimination, harassment, verbal/physical violence or abuse (e.g. by government officials, health care providers or police), denial of work or social security benefits, unjust dismissal
- Arrest and detention without legal grounds or with a lack of due process
- HIV testing or other medical procedures without informed consent
- Denial of medical or government services or benefits, including in prison settings

► **People or organizations providing HIV-related services**

- Discrimination, harassment or verbal/physical abuse (e.g. by government officials, health care providers, police or the media)
- Prevention of registration or deregistration as an NGO
- Shutting down of premises
- Damage to property

► **People in prison settings—including pre-trial detention**

- Violence, including sexual violence and sexual exploitation (or abuse)
- Segregation of people living with HIV
- Mandatory HIV testing
- Forced treatment and/or treatment without informed consent
- Interruption or denial of access to prevention and to treatment
- Absence of independence of health staff from security services
- Denial of access to some activities (education, work etc.)
- Discrimination, harassment.

**Migrants—including migrant workers—women, children (including adolescents, in particular, those from key populations groups), refugees, internally displaced persons, stateless persons, asylum seekers and people with disabilities** may also be subject to HIV-related human rights violations, including violence, denial of HIV-related services or other cruel, inhuman or degrading treatment.

Not all forms of discrimination or rights violations against individuals, groups or organizations will necessarily require an emergency response. Some may be resolved through the proper intervention of law enforcement or government authorities, as well as through civil legal intervention made available through a legal aid mechanism, while others may be best addressed through longer-term advocacy for change to laws, policies or practices. **In all cases of crises involving danger to individuals, groups or organizations, the primary aim of the crisis response should be to secure the return of the affected individuals, groups or organizations to a situation of safety and well-being.**

## 4.2 KEY CONSIDERATIONS IN THE CRISIS RESPONSE

The following are key considerations that may help in implementing any response to HIV-related human rights crises involving individuals, groups or organizations:

- ▶ **Do no harm:** Only choose courses of action that will not cause any further harm to the individuals, groups or organizations involved. Crisis responses, whether public, behind the scenes, alone or with partners, should be pursued solely for these ends while individuals are in danger of being harmed. This assessment should be made on a case-by-case and an ongoing basis as the crisis unfolds, and if possible, in close consultation with the concerned people, their families or allies and UN and other relevant partners. Other partners should be advised about what they can do, or should not do, to ensure the safety and well-being of the people involved. No one should be pressured into any action that would make the situation worse for the individual(s), including public or joint statements.
- ▶ **Ensure staff safety:** A key obligation of senior staff in UN and partner organizations is to ensure the safety of their colleagues. No action should be taken that threatens their safety or the safety of others. International staff should take particular care to be sensitive to the safety of local staff, and have a clear sense of the socio-cultural, religious and political context, including how national staff would be perceived if they were publicly associated with particular actions. All staff members have a professional and personal obligation to take all possible steps to minimize risks and danger. This obligation involves:
  - making a reasonable judgement about how far UN staff can, and should, go in advocacy and actions to intervene. If there is any risk, they should consult with their supervisors to determine how best to proceed;
  - if there is any doubt about the ability to secure staff safety, giving strong consideration to referring the case to an individual or organization that is able to address the situation with fewer negative consequences;
  - if meeting victims or witnesses involved in the crisis, exercising good judgement when deciding on the time and place to meet. UN staff should not go alone to such meetings, and should ensure that another person knows where they are going and schedule regular check-ins; and
  - contacting and seeking support from the UN Department of Safety and Security, whenever a possible threat to the safety of UN staff or the security of UN premises is involved. If there is any possibility of a security threat to staff or premises, the Resident Coordinator, regional office and security at HQ should be informed about the situation.
- ▶ **Do not create unrealistic expectations:** UN staff should make clear to those involved what the UN and its partners can and cannot do, and ensure that any UN undertakings to act are fully honoured.
- ▶ **Support national and local actors to be the champions in the crisis:** Ultimately, the prevention and resolution of national human rights crises will depend on local efforts. One of the most important functions of the UN is, therefore, to support national and local actors to be human rights champions and, where possible, to resolve crises among themselves. Key supportive roles for the UN include creating safe spaces for civil society groups to consider

their interests, and convening civil society and government representatives to find solutions. In exercising its convening role, the UN is able to highlight the importance of the issue at hand, the fact that it is likely to have both national and international implications, and the fact that all affected parties, both in government and civil society, have legitimate roles to play in finding a solution.

- ▶ **Obtain adequate and accurate information in a respectful and sensitive way:** In interactions with affected individuals and government officials, UN staff should ensure that they ask clear and precise questions about the crisis so that any action taken is based on the best and most up-to-date facts. Probing beyond essential facts should be undertaken with caution, particularly when trauma is likely to have occurred.
- ▶ **Maintain confidentiality:** Private information should not be shared without the prior consent of the individuals concerned, or in circumstances where the information suggests that others may be placed at a significant risk of serious harm due to current or future actions that may be taken. If information must be shared among UN staff, this should be done only on a 'need to know' basis. UN staff should take particular care to evaluate the sensitivity of information before sharing it by email, phone or radio channels that may not be secure.
- ▶ **Document all communications and actions:** All discussions and written communications with government representatives, and with affected individuals or organizations, including referrals to other organizations, should be promptly documented. This will be important if the UN or its partners in the response need to justify the actions taken or not taken, or face any accusations of wrongdoing.
- ▶ **Help to ensure legal advice and other forms of support for those affected, as appropriate:** In some situations, the most important thing that UN staff can do is ensure that the person in danger or at risk has some sort of legal support in their interactions with the police and judicial system. Appropriate legal service providers should be identified before a crisis occurs and be on standby to assist in securing the release of those affected. Because the UN will seldom be able to pay for such services, sustainable arrangements should be made in advance. It is also useful to keep a list of civil society crisis support contacts, including crisis counsellors. Where key populations or their family members or associates are at risk of violence, such groups may also consider the establishment of 'safe houses' where members can go if necessary, or may consider making plans to leave the country. While these are civil society—not UN—initiatives, the UN may legitimately seek to ensure that appropriate measures are taken to protect anyone who is in danger as a result of the crisis.
- ▶ **Do not break the law, and do contact the police, if appropriate:** Staff should never break the law of the country of their duty station. If the police can and will offer protection and security to the people threatened, then they should be contacted and be part of the solution to the crisis. However, it is important to ensure that the affected individuals involved in the crisis agree to this action.



### 4.3 POTENTIAL STEPS IN RESPONDING TO A CRISIS RELATING TO AN INDIVIDUAL, GROUP OR ORGANIZATION

While each crisis will need to be managed on a case-by-case basis, the following sequence of actions may typically be considered in the event of a crisis involving potential harm to an individual, group or organization:

- Inform and convene the crisis response team and inform and engage other relevant partners in the country, as appropriate, as well as regional offices and HQ.
- Ensure safety of staff members.
- Work with the crisis response team and other advocates and partners to strategize on the best approaches and ways forward, including ways to support the leadership of local civil society.
- Talk to police and relevant officials in the Ministry of Justice about the terms and conditions of any detention, including safety and access to HIV treatment within the detention facility.
- Help to ensure that the individual(s) has/have access to legal support.
- Work with the police to ensure that accused persons are not exposed to harmful media coverage.
- Ensure that adequate measures are being taken to ensure the safety of the individuals' family members and associates if they are at risk.
- Engage the Ministry of Health and National AIDS Commission about the negative impact that the incident/approach could have on the HIV response.
- After making a confidential request to the government, decide if a press statement is appropriate and work with local partners, regional offices and HQ to draft it.
- Work with the regional office, HQ, UNAIDS co-sponsors, UNAIDS Secretariat and NGOs regarding any international advocacy.



# 5. Responding to Human Rights Crises Involving Punitive Laws, Policies or Programmes Related to HIV

## 5.1 WHAT TYPES OF CRISES COULD ARISE?

A human rights crisis involving punitive laws, policies or programmes could involve existing or emerging laws, policies, practices or programmes that jeopardize or hinder an evidence-informed, rights-based response to HIV. While it is not exhaustive, the following list provides potential examples of these types of crisis:

- laws or policies that criminalize the behaviours of people living with HIV or key populations, their organizations or associates, that limit their access to HIV prevention, treatment, care or support services or that otherwise infringe upon their basic human rights (e.g. right to assemble);
- criminalization of HIV transmission beyond intentional transmission when an actual HIV transmission has occurred;
- systematically abusive or inhumane law enforcement practices targeted at key populations, including practices that prevent access to HIV treatment, prevention, care and support;
- laws that impose some form of restriction on the entry, stay and residence of people living with HIV based on this status, including, for example, legislation which calls for the deportation of individuals once their HIV-positive status is discovered;
- detention of people living with HIV or key population groups without due process and/or adequate access to health and other services;
- mandatory HIV testing policies or systematic failure to obtain informed consent and maintain confidentiality of test results;
- policies or laws on segregation of people living with HIV;
- official endorsement of quackery or bogus or ineffective approaches to HIV prevention and treatment, or AIDS denialism, laws, policies or practices that fail to protect against gender-based violence, harassment and gender inequality;
- laws or policies related to forced or coerced sterilization or abortion for women who use drugs; and
- the death penalty for drug offences.

## 5.2 KEY CONSIDERATIONS IN THE CRISIS RESPONSE

The following considerations may help in implementing any response to HIV-related human rights crises involving punitive laws, policies or programmes:

**Keep abreast of legal, policy or programmatic developments:** UN country staff should have developed contacts in government and parliament and among civil society that keep them informed in advance of draft legislation, parliamentarians' interests in certain matters or emerging government policies. In parliament, it is useful to have regular interaction with the relevant Parliamentary Committee on health or HIV, if one exists in the country, and to be familiar with the work of other committees that might consider an issue relevant to HIV, such as criminal justice, social affairs, trade, budget, culture and religion.

**Know the procedures, people and time-frame for law, policymaking and programmatic planning and implementation:** When discriminatory or punitive laws or policies are proposed, it is important to be able to strategize about the best times and entry points to influence them positively. To do so, UN staff should be adequately informed about the legislative, policy or programme-making procedures in the country, and know the relevant government, parliamentary or implementing personnel and the time-frames involved. This knowledge will be essential to determine when, how and with whom UN organizations and partners can engage to influence impending policies, laws or programmes that are not evidence-informed or rights-based.

**Use official UN (including UNAIDS co-sponsor and Secretariat) positions:** To influence the direction of law- and policymaking, UNAIDS co-sponsoring organizations and/or the UNAIDS Secretariat at HQ, regional or country level may provide official comments on draft laws or policies well in advance, in consultation with other key partners, such as donors and civil society groups. Such comments should be based to the greatest extent possible on publicly available policies and positions of the UN and cite relevant data and evidence.

**Balance the risks and benefits of public versus private actions:** One of the most strategic decisions faced by UN staff and other international partners will be to determine whether public advocacy, 'behind-the-scenes action' or both should be pursued in response to problematic, pending laws, policies or programmes. UN staff should be careful not to inflame a situation and further entrench extreme views. In highly volatile situations, countries may assert 'national sovereignty' and 'local culture' or warn against 'interference from outsiders'. In such cases, behind-the-scenes advocacy is likely to be most appropriate. However, the UN should always be willing to stand up publicly for the minimum human rights standards of access to HIV services and protection from violence, stigma and discrimination. These considerations apply equally to crises involving individuals, groups or organizations.

**Support national and local actors to be the champions of the issue:** As with other types of crises, UN staff should aim to support national actors to respond effectively to proposed changes to local laws, policies and programmes. UN organizations can provide space for national players to organize themselves and determine how best to respond, including to develop policy positions. The UN can also promote or convene a process through which affected populations and civil society organizations can safely interact with government officials, parliamentarians, the judiciary, national human rights Institutions and religious leaders.

**Ensure appropriate coordination by UN organizations and other international partners:** It is always preferable for the international community to have a united position in a crisis, and to work together to solve it. This will increase the impact of UN action and protect individual agencies from backlash. In the event of a crisis, UN staff should inform and engage with other UNAIDS co-sponsors (consistent with the division of labour), the UNAIDS Secretariat, bilateral agencies and international partners for coordinated action. The most important consideration

in developing a crisis response is identifying what will work best to solve the crisis. In some circumstances, multiple meetings and statements by numerous international agencies may exert greater pressure on local authorities than single, joint actions. Whether specific actions are undertaken on an individual or collective basis, they should, to the greatest extent possible, form part of a coordinated approach in which all parties involved in the response communicate with one another and work together based on a joint strategy.

### 5.3 POTENTIAL STEPS IN RESPONDING TO A CRISIS INVOLVING DISCRIMINATORY OR PUNITIVE LAWS, POLICIES OR PROGRAMMES

While each crisis will need to be managed on a case-by-case basis, the following sequence of actions may typically be considered in the event of a crisis relating to a problematic law, policy or programme (some actions are confidential, while some are public):

- The crisis response team focal point convenes or communicates with the other crisis response team members and keeps other partners in the country and regional offices and HQ informed.
- The team or its designates: 1) develop a strategy, including whether it is desirable and how it is possible to support local actors (civil society or government) to be in the lead; 2) determine the most effective set of actions for the UN; and 3) invite the engagement of other relevant partners within and outside the UN system.
- With the knowledge and support of the Resident Coordinator, a designated representative of the UN speaks with or meets relevant government/parliamentary authorities and keeps a record of this in a Note for the File. Preferably and when appropriate, this should be shared with the authorities with whom s/he meets.
- The Resident Coordinator, crisis response focal point or designate writes a confidential and formal communication on the issue to the relevant government authorities.
- The crisis response team focal point and/or a designate confidentially contacts those with influence on the primary parties and seeks their support.
- With the support of the regional office and/or HQ, the focal point or a designate provides official comments to government/parliament regarding draft policies, laws or programmes, and may share these with civil society, if it is strategic to do so.
- The Resident Coordinator, focal point or a designate may give a media interview on the subject, in a non-confrontational manner, presenting the general UN position on the issue. Relevant UNAIDS co-sponsor and Secretariat HQ communications teams should be informed in advance if the interview is with international media.
- If appropriate, heads of relevant agencies may write to or call the Head of Government. Deputy heads of agencies may also write to the Vice-President or someone of equal rank. Such calls or letters should be confidential in the first instance.
- If the government has not responded adequately, then the Resident Coordinator or a designate informs the government that the UN is considering making a public statement or press release after a certain date has passed. The relevant government actors should know whom to contact in the UN if they wish to engage in further dialogue before this time.

- The UNAIDS Country Team, UNAIDS co-sponsors and/or UNAIDS Secretariat may issue a public statement in coordination with Communications and other appropriate counterparts at regional and HQ offices.
- The UNAIDS Country Team, UNAIDS co-sponsors and/or the UNAIDS Secretariat work either publicly or behind the scenes with international and regional advocates and influential champions to influence the country's actions on the issue.

## 6. Two Case Studies

### 6.1 KYRGYZSTAN

Under Kyrgyz law, sex work is not considered a crime or an administrative offence and is not directly punishable. In 2012, the Ministry of Internal Affairs initiated a process to recriminalize sex work in the country by introducing amendments into the Code of Administrative Responsibility of the Kyrgyz Republic.

In response to this initiative, stakeholders interested in HIV prevention among sex workers joined together to coordinate their advocacy. As the UN had played a crucial role in the earlier process of decriminalization of sex work, it was actively involved at country, global and regional levels in responding to the initiative to recriminalize it. The role of each UN agency was clearly established at the beginning, based on the UNAIDS division of labour, ensuring strong coordination. A national consultation of sex workers held with the support of UNFPA served as a platform for all stakeholders to discuss steps to be taken in response to the decriminalization initiative and, importantly, to build community capacity on human rights-related issues. The UN also organized a meeting with the Minister of Interior Affairs to communicate stakeholders' concerns about the adverse effects of criminalization. The Minister later provided positive feedback about his participation in the meeting. Many stakeholders were involved in the process of preparing a package of documents reflecting the negative impact of criminalizing sex work that was submitted to both the Ministry of Interior Affairs and parliamentarians. A petition against the decriminalization initiative was also launched and submitted to the Ministry.

As a result of these collective efforts, the Ministry submitted an official request asking the Government of Kyrgyz Republic to withdraw the initiative. The request was approved. A key factor in the success of this effort was that it was led and coordinated locally by the National Network of Sex Workers, with support from UN agencies and from other national and international organizations, including SWAN (Sex Worker's Rights Advocacy Network in Central and Eastern Europe and Central Asia).

### 6.2 SENEGAL

In Senegal, same-sex activities are criminalized, and people convicted are subject to prison sentences of up to five years. Beginning in 2002, local and international NGOs began providing information and support to men who have sex with men (MSM) in Senegal, including peer HIV education training. The progressive mobilization of MSM in the country in the following years led to the inclusion of MSM representatives in most of the HIV-related decision-making bodies, including the Forum des partenaires, the National AIDS Council and the Global Fund Country Coordinating Mechanism. MSM analysis and programming was included for the first time in the National AIDS Strategic Plan 2007–2011. MSM were included as part of the National AIDS Programme, and eight MSM organizations undertook capacity-building with the aim of enabling them to qualify as Sub-Recipients of Global Fund grants.

As a result of these advances, MSM became more visible, not only in the national HIV response but in Senegalese society more broadly. However, they also provoked a public debate and backlash in the country, culminating in late 2008 in the arrest of nine gay men who were members of a group providing condoms and HIV treatment support, and their subsequent conviction and imprisonment for acts against nature and criminal association. These events attracted significant international attention and condemnation. A crisis committee was formed in the country consisting of Senegalese organizations, UN agencies and NGOs, which worked to coordinate the national and international response. UN staff played a number of key roles: Senior staff of UN agencies reached out to senior government officials; financial support was provided to MSM groups; the UN facilitated the recruitment of lawyers to represent the accused; and UNAIDS released a global press release condemning the arrests. Actions were also taken to protect other members of the MSM community from violent attacks, including supporting civil society efforts to provide safe homes and shelters to those facing threats to human rights violations and moving people to shelters in the midst of the crisis. A key advocacy message throughout this period was communicating to public officials the negative impact of the imprisonment on the national HIV response. Largely as a result of these national and international efforts, the convicted men were released in April 2009.

In addition to responding to the immediate crisis, the crisis group also developed plans to prevent future incidents of this kind, including developing longer-term advocacy strategies to promote the rights of MSM in the country and the decriminalization of same-sex relations, reduction of violence against MSM and more tolerant attitudes on the part of religious authorities, politicians, police, the judiciary and the media.



