HUMAN RIGHTS AS A KEY PART OF THE NEXT STRATEGIC PLAN OF THE GLOBAL FUND TO FIGHT HIV/AIDS, TUBERCULOSIS AND MALARIA

DISCUSSION PAPER

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INTRODUCTION AND OBJECTIVE OF THIS PAPER

The new strategic plan is an opportunity for the Global Fund to Fight HIV/AIDS, Tuberculosis and Malaria ("Global Fund") to embed international human rights principles more firmly into its vision, mission, goals, and strategy. Harnessing the power of human rights will enable the Global Fund to protect and optimize its existing investments and to extend health and development benefits to the millions more in need.

> *The protection of human rights is central to an effective response to HIV/AIDS, TB and malaria and creates the conditions that will optimize the Global Fund's investments at the country level.*

The Global Fund has on many occasions called for stronger protections for human rights[i] and supported human rights through its programmes, processes and advocacy[ii]. However, most of these efforts have depended on *ad-hoc* advocacy and leadership by individuals within the Global Fund Secretariat, Board or country coordinating mechanisms (CCMs). The Global Fund has no overarching charter or policy document that articulates what role human rights should play in its funding decisions, nor a strategy to ensure that human rights programming is built into funding proposals.

This discussion paper highlights why human rights should represent a key part of the Global Fund's next strategic plan, outlines some current Global Fund initiatives that support human rights, and identifies opportunities for strategically enhancing human rights and health outcomes. It suggests that a new strategic plan that clearly addresses how human rights should be incorporated at multiple levels into Global Fund programmes, processes and advocacy, including how the Fund should respond to alleged human rights violations at the country level, would make a tremendous contribution to delivering HIV, tuberculosis (TB) and malaria results as well as broader health and development goals.

WHAT IT MEANS TO INCLUDE HUMAN RIGHTS AS A KEY PART OF THE NEXT STRATEGIC PLAN

For the purposes of this paper, including human rights as a key part of the next strategic plan of the Global Fund means having a strategic plan that optimizes the effectiveness of the Global Fund's investments by strengthening **programmes, processes and advocacy** that are based on international human rights principles. Specifically this means three things:

1) Supporting increased investment in **programmes** that protect and fulfill human rights. This includes programmes such as legal aid and empowerment, law reform and human rights training that concretely address underlying vulnerabilities and non-medical dimensions of HIV/AIDS, TB and malaria, thus making Global Fund-supported health programmes more effective;
2) Ensuring that CCMs and other **processes** actively support human rights-based approaches. This includes ensuring appropriate expertise and transparency on CCMs to direct Global Fund resources towards those who need them most, according to the epidemiological characteristics of the recipient country and the needs of vulnerable and marginalised populations;
3) Engaging in **advocacy** in recipient countries where human rights violations threaten to undermine the Global Fund's investments and progress in other areas of health and development. This includes constructively engaging with governments to ensure a favorable human-rights climate for Global Fund investments, monitoring and assessing the risks that Global Fund-supported programs might undermine human rights, and, where appropriate, speaking out against human rights violations that could jeopardize the Global Fund's programmes or reputation.

> *Promoting and protecting human rights is especially important in the current, resource-constrained environment because it will result in efficiency gains.*

WHY HUMAN RIGHTS SHOULD OCCUPY A KEY PART OF THE NEW STRATEGIC PLAN

The protection of human rights is central to an effective response to HIV/AIDS, TB and malaria and creates the conditions that will optimize the Global Fund's investments at the country level. Further, the promotion and protection of human rights in programming for the three diseases can have an impact on the achievement of health and development goals beyond the three diseases[iii].

Promoting and protecting human rights will result in efficiency gains and impact beyond the three diseases. Promoting and protecting human rights is especially important in the current, resource-constrained environment because it will result in efficiency gains by ensuring:

- ***That those who most need prevention, treatment, care and support services can access them*.** Human rights programmes, processes and advocacy will increase countries' ability to more effectively reach those who are most affected by the three diseases—people who use drugs, men who have sex with men and other sexual minorities, sex workers, migrants, prisoners, women, young people and others—by helping to overcome barriers, such as stigma, discrimination, criminalization and social marginalization, that keep them away from information and services[iv];
- ***Improved service quality*.** For example, protecting confidentiality and ensuring counseling and informed consent create optimal conditions for the uptake of services, especially for people seeking HIV testing, women seeking PMTCT services[v], and adolescents seeking sexual and reproductive health and HIV services; and
- ***The empowerment of people to be able to protect their health*.** For example, protecting the human rights of women living with and affected by HIV—to freedom from violence, to equal access to property and inheritance, to equality in marriage and divorce, and to access to information and education—can empower them to safely disclose their HIV status, adhere to a treatment regimen, and discuss HIV with their children.

By supporting health responses that address the needs of marginalized and traditionally overlooked groups, the Global Fund can bring public health and societal benefits to a wider population[vi] and contribute to the creation of environments more conducive to development progress[vii]. Human rights investments also protect many of the fragile gains that have been made so far in responding to the three diseases.

Greater attention to human rights is consistent with the principles of the grand strategy[viii]. The Chair and Vice-Chair of the Global Fund Board have proposed the grand strategy framework to guide the development of the new Global Fund strategic plan. The principles and practices of human rights are consistent with the principles of this framework. For example:

Human rights approaches not only increase the effectiveness of programmes to combat the three diseases, but simultaneously contribute to progress on other health and development issues grounded in structural and social inequities, such as gender equality and maternal mortality and morbidity.

- A focus on human rights supports an "ecological approach" to the three diseases, one that facilitates shared agendas and engagement with other sectors and priorities including poverty reduction, gender equality, good governance, and the rule of law[ix].
- Human rights-based approaches support strategies in which the objectives and the means of achieving them are mutually-reinforcing – that is, they imply a set of proven tactics and programmes that simultaneously advance public health and human dignity[x].

- Human rights approaches not only increase the effectiveness of programmes to combat the three diseases, but simultaneously contribute to progress on other health and development issues grounded in structural and social inequities, such as gender equality and maternal mortality and morbidity[xi].
- The meaningful participation of affected populations in all decisions that affect them, a key tenet of human rights, is essential to the collaborative, community-driven approach to intervention design and implementation recommended under the grand strategy approach and is already a core element of the Global Fund's model.

Greater focus on human rights will harmonise the Global Fund with the direction of key partners and enable it to actively support a globally recognized priority. The 2010 International AIDS Conference in Vienna demonstrated the depth, diversity and importance of support for human rights in the HIV response. In addition, other key partners of the Global Fund are working to strengthen attention to human rights in their strategic plans. For example:

- The Stop TB Partnership Board has formed a Stop TB Human Rights Taskforce, whose mandate includes mainstreaming human rights into the Stop TB Strategy for 2006-2015[xii].
- One of the three strategic directions in the draft Joint United Nations Programme on HIV/AIDS (UNAIDS) Strategic Plan for 2011-2015 is the "advancement of human rights and gender equality for the HIV response."[xiii]
- The draft WHO Global Health Sector Strategy for HIV/AIDS 2011-2015 includes a human rights focus as one of is guiding principles[xiv].
- Human rights are one of the core pillars of UNDP's work on HIV, health and development.
- Human rights are the foundation of the International Labor Organization's strategy on HIV and AIDS and the World of Work (2010-2015)[xv].

PROGRAMMES, PROCESSES AND ADVOCACY

As noted above, a strategic plan that emphasizes human rights-based programmes, processes and advocacy will maximize the effectiveness of the Global Fund's investments. Each of these elements is discussed in turn.

(I) Supporting increased investments in *programmes* that protect and promote human rights

UNAIDS recommends that every national HIV response include a package of seven key human rights programmes. These are: (a) programmes to reduce stigma and discrimination, (b) programmes to sensitize police and judges; (c) legal services; (d) programmes to train health care workers in nondiscrimination, confidentiality and informed consent; (e) programmes to monitor and improve the impact of the legal environment on HIV; (f) "know your rights/laws" campaigns or legal literacy; and (g) programmes to counter harmful gender norms and empower women and girls[xvi] [1].

The Global Fund has already taken some steps to increase investments in various types of key human rights programming. The Gender Equality and Sexual Orientation and Gender Identities (SOGI) strategies are expected to result in greater investment in addressing barriers to access to services for HIV, TB and malaria for women and girls and sexual minorities, particularly through the creation of enabling legal and policy environments. However, recent studies suggest that the Global Fund can and should do more to increase its investments in human rights programming and ensure that the benefits of these programmes extend to other key populations.

[1] It is important to note that this is not an exhaustive list of human rights programming in the context of HIV and does not preclude the importance of other types of rights based programmes in the context of HIV – for example: HIV workplace programmes, programmes for orphans and caregivers, programmes for the rehabilitation for rape survivors.

Further, the Global Fund has a responsibility to ensure that its funding is not used for programmes that violate human rights and undermine effective responses to the three diseases.

Comprehensive human rights programming requires systematically addressing underlying vulnerabilities and creating enabling social, legal and policy environments. In his report delivered at the twenty-first Global Fund Board meeting in April 2010, the Executive Director of the Global Fund acknowledged that "a supportive social, legal and policy environment is a prerequisite for a successful and sustainable response to HIV."[xvii] Such environments are most effectively created at the country-level through the above package of mutually-reinforcing programmes which address stigma and discrimination at the level of laws, institutions and communities[xviii]. These programmes aim to empower marginalised individuals to claim their rights, including the right to equal access to the health services they need to protect themselves from disease, and other rights such as the right to non-violence, equality, due process, information, education, and participation. Realisation of these rights mitigates the vulnerabilities that result in poor health outcomes for individuals and communities. As TB and malaria are also grounded in social and economic inequality, effective responses to these diseases must also be rights-based[xix]. Accordingly, a similar set of mutually-reinforcing programmes to address the human rights violations experienced by those most vulnerable to malaria and TB would also contribute significantly to effective responses to these diseases.

Governments have committed to protecting and promoting human rights in responses to the three diseases, but this has not yet translated into adequate programming.

Box 1: An example of human rights programming – Lesotho: Legal aid advances HIV outcomes for women

As is well documented in a number of countries, especially in Africa, women who survive a spouse or partner who died of AIDS may face actions by the spouse's family to appropriate the marital property or may face other barriers to inheritance and property ownership. This is the focus of Global Fund-supported legal work by the Federation of Women Lawyers – Lesotho (FIDA-Lesotho) in one of the most heavily AIDS-affected countries in the world. FIDA-Lesotho provides legal assistance to women and children living with or affected by HIV, helps them to know their rights, and raises broader rights awareness through mass media broadcasts and classroom education. In addition to property and marriage laws, FIDA-Lesotho also seeks to raise broad awareness of laws related to sexual violence, including the requirement to report all incidents of sexual violence among children.

The Global Fund should encourage countries to include comprehensive human rights programming in their proposals in order to improve the effectiveness of their responses to the three diseases. Comprehensive human rights programmes need to be in place and they must be appropriately targeted to address the needs of key populations. Governments have committed to protecting and promoting human rights in responses to the three diseases, but this has not yet translated into adequate programming [xx]. A study carried by the UNAIDS Secretariat and the International HIV/AIDS Alliance (2008-2009) covering the national AIDS planning documents of 56 countries found that, although about 90% of country activity plans included key human rights programmes, fewer than 50% of countries actually costed or budgeted for such programmes[xxi]. The review also found that countries rarely included a comprehensive package of programmes to increase access to justice for people living with HIV or other key populations and reduce stigma and discrimination in their national strategies.

Another study, carried out by UNDP, UNAIDS Secretariat and the Global Fund (2010), found that only 2.4% of HIV funds committed in Rounds 6 and 7 went to any of the seven recommended human rights programmes[xxii]. The same study found that although all successful HIV proposals from Rounds 6 and 7 included at least one of the seven human rights programmes[xxiii], less than a quarter of the human rights programmes were explicitly focused on men who have sex with men, transgender people, people who use drugs, and sex workers.

Additional analysis undertaken by the Global Fund shows a positive trend in human rights programming for key populations covered by the SOGI Strategy: while only 13% of successful HIV proposals in Round 8 included at least one human rights programme targeted to men who have sex with men, sex workers or transgender people, 43% of successful proposals in Round 9 did[xxiv]. Notwithstanding this positive trend, the study authors concluded that of all the programmes targeted to these populations, very few addressed structural barriers to services such as law and denial of access to justice[xxv].

The UNDP, UNAIDS Secretariat, and Global Fund study (2010) also analysed the type of human rights programmes intended to benefit key populations. This study found that the majority of the human rights programmes explicitly intended to benefit men who have sex with men, transgender people, sex workers, people who use drugs, and prisoners were programmes to reduce stigma and discrimination in the community and key sectors such as health and justice. Programmes to empower individuals to claim their rights – such as law and policy reform, legal services and 'know your rights' campaigns – were significantly less likely to be intended to benefit these populations. These findings suggest that the important prevention, treatment, care, and support benefits of human rights programmes, especially for those most at risk, are not being maximized under Global Fund grants.

In funding human rights programmes, the Global Fund should encourage countries to address the human rights and legal, political and social barriers to access to services for *all* key populations who face criminalization and social marginalization, especially populations that are typically underserved such as people who use drugs, prisoners, and migrants. Research shows that prisoners and migrants were explicitly targeted by only 14% and 5% respectively of the key human rights programmes included in successful Round 6 and 7 Global Fund HIV proposals[xxvi]. Similarly, although the Global Fund has supported some TB programmes that focus on increasing equity and access for prisoners and migrants[xxvii], more needs to be done[xxviii]. These findings suggest that the Global Fund may need to consider additional steps to increase human rights programmes that benefit these populations. Such steps might include an expansion of initiatives aimed at empowering the more underserved key populations - whose marginalization often prevents them from participating in the planning and implementation of responses to health issues - to engage in Global Fund processes[xxix].

The Global Fund should ensure that human rights programmes included in successful proposals are ultimately funded, implemented and evaluated. The UNDP, UNAIDS and Global Fund study (2010) of key human rights programmes in Rounds 6 and 7 of the Global Fund HIV portfolio[xxx] found that a full third of the human rights programmes included in successful proposals were not ultimately included in the grant agreement[xxxi]. Hence, unless alternate funding sources were subsequently identified, one third of the key human rights programmes identified by CCMs as necessary for an effective HIV response were not implemented. The observed attrition of human rights programmes underscores the urgent need to strengthen capacity and technical assistance for human rights, especially at the country level.

The Global Fund should monitor respect for human rights in its investments and take appropriate action to address alleged violations. The Global Fund Board and Secretariat should be aware that some of its funding has the potential to bring about unintended consequences and may inadvertently be used to finance programmes that undermine the protection and promotion of the very rights recognized as critical to effective HIV responses[xxxii]. The new Global Fund strategic plan should ensure that the Global Fund monitors respect for human rights in Global Fund-supported programmes and has standard procedures in place to respond to violations[xxxiii].

Box 2: An example of programming that may undermine human rights – compulsory drug detention

In 2009, the western Pacific regional office of the World Health Organization (WHO) published a human rights analysis of involuntary institutional "treatment" of people who use drugs in a number of countries in the region (WHO-WPR 2009). WHO raised concerns that the punitive approaches used in compulsory drug treatment centers may negate whatever health benefits they offer, which in turn are limited because services are of poor quality, lacking in transparency and accountability, and lacking in respect for the agency of patients. The Global Fund has approved grants that support a number of HIV-related activities in compulsory drug treatment centers in several Asian countries, while recognizing that human rights violations occur in these centers and calling for their closure. Executive Director Michel Kazatchkine has acknowledged that funding services in such centers represents an "ethical dilemma", as even the provision of life-saving HIV prevention and treatment for detainees risks entrenching these institutions as part of national HIV responses. Several nongovernmental organizations have recommended that the Fund adopt more rigorous processes to monitor and weigh these human rights risks and be prepared to disengage from the centers where the human rights risks outweigh the benefits of providing HIV services.

(II) **Developing *processes* that actively support the implementation of human rights-based approaches**

By taking steps to include affected communities on its board, CCMs and other bodies, the Global Fund is already taking steps to apply the human rights principle of participation to its processes and governance. However, a more strategic and systematic approach to human rights-based processes has the potential to increase the impact and effectiveness of the Global Fund's investments and stimulate changes in country-level policy and practice. Policies and processes should be tailored towards ensuring that Global Fund resources are directed to those epidemiologically most in need, an imperative only underscored by the current fiscal crisis.

The Global Fund needs to support capacity development within key structures to better address human rights. Recent studies[xxxiv] conclude that strategically strengthening attention to human rights in key processes, such as the CCMs and the TRP, would contribute to two things: ensuring that resources are directed to those who need them most according to epidemiological criteria; and increasing rights-based programming, especially for criminalized and other key populations. Policies to meaningfully involve representatives of key populations on CCMs and the Global Fund Board have represented significant steps towards institutionalising partnership with stakeholders, an outcome that has benefits beyond the health objectives that are the focus of the Global Fund-supported programmes[xxxv]. For example, the Global Fund has facilitated dialogue between people who use drugs and governments as a result of broad stakeholder involvement in CCMs and the Board[xxxvi].

However, the participation of people who use illicit drugs, men who have sex with men, transgender persons, and sex workers in CCMs and on the Board is still hampered by criminalization, marginalization and inadequate protections for their human rights[xxxvii]. Similarly, the Technical Review Panel (TRP), which has a critical role in assessing proposals, could benefit from further increased capacity to assess proposals from a human rights and legal perspective. This would be best achieved by having the TRP include more members with meaningful health-related human rights experience and expertise. Briefings for the TRP on human rights issues and the recommended programmes to address them should be strengthened.

Box 3: An example of increasing capacity within CCMs – Jamaica: Improving CCM processes

A 2008 investigation by the International Treatment Preparedness Coalition (ITPC) of CCM processes highlighted Jamaica as a case in which the few NGO members of the CCM complained that their participation was tokenistic, that they did not receive information and documents for CCM meetings in time to prepare, and that they did not even always understand the role of the CCM. The ITPC report also criticized the conflict of interest represented by the fact that the CCM chair was director of the National AIDS Committee and was a close colleague of the head of the PR, who directed the National HIV/STI Control Programme. With help from UNAIDS to broker discussions, NGOs managed to elect their own CCM members for the first time, and the CCM was restructured to include dedicated seats for "key populations". The new CCM includes a respected AIDS and LGBT advocate as a member. A Global Fund report also cites Jamaica as an example of a CCM with an improved conflict of interest policy by which all members will complete a form to disclose conflicts of interest and there will be an oversight committee to monitor conflict of interest concerns.

The Global Fund should strengthen the Secretariat's capacity on human rights. The human rights concerns noted above are reminders that vigilance is required to ensure human rights are protected and promoted in the work of the Global Fund. The Global Fund Secretariat has a critical role to play in overseeing the implementation of policies and processes within the Global Fund, including portfolio analysis. Whilst external observers can and do contribute to the analysis of the Global Fund's performance, the Secretariat can and should play a key role in implementing systems to monitor and strengthen the Global Fund's role in protecting and promoting human rights over the period of the next strategic plan and beyond. With the appropriate capacity, the Secretariat would be able to support the development and implementation of appropriate policies and processes within the Global Fund on human rights, and establish a monitoring system to keep track of progress in incorporation of human rights programmes in proposals and grant agreements, as well as to monitor the appearance of programme elements that raise human rights concerns.

The Global Fund should identify what role human rights considerations should play in its processes for making funding decisions. In this regard, the Board should consider whether additional guidance is needed for programmes in countries that have punitive laws that undermine effective responses to the three diseases; where critical human rights issues undermining effective responses to the three diseases are not being addressed through adequate programmes; whether there are some safeguards that should be established to ensure human rights are protected during programme implementation; and what the appropriate response from the Secretariat and/or Board should be if programmes are identified that do violate human rights.

The Global Fund's Board has demonstrated policy and advocacy leadership in, for example, calling for the end of HIV-related travel restrictions.

(III) Engaging in *advocacy* against human rights violations that undermine the Global Fund's investments

The Global Fund's Board has demonstrated policy and advocacy leadership in, for example, calling for the end of HIV-related travel restrictions. Michel Kazatchkine and the Global Fund Secretariat have used the Global Fund's platform to advocate against violations of human rights that undermine the effectiveness of HIV, TB and malaria programmes, including denial of the right of marginalized people to comprehensive health services and punitive or discriminatory laws and law enforcement practices that interfere with health service delivery[xxxviii].

The Global Fund can advocate for better protection and promotion of human rights – both within Global Fund supported programmes and in the environment that impacts on the success of these programmes. As stakeholders across all levels call for increased attention to addressing the human rights issues blocking progress towards health and development objectives, the Global Fund's voice can have a significant impact. Through its advocacy, the Global Fund can make it clear to applicants that Global Fund resources are available to address all

those in need – especially those most in need – and to support key human rights programmes under the general funding streams as well as specific windows, such as community systems strengthening. It can advocate for rights-based approaches to all responses, and use the leverage of the ensuing health benefits to secure human rights gains. For example, as the largest and only major funder of multidrug resistant (MDR)-TB services[xxxix], the Global Fund has a key role to play in promoting TB treatment programmes that are consistent with the WHO-recommended rights-based treatment approaches as the most effective course of action in TB and drug-resistant TB treatment[xl]. It can also advocate for governments and parliaments to improve human rights protections that will increase the effectiveness of Global Fund-supported programmes[xli].

Box 4: An example of advocacy – Speaking out for the human rights of people who use drugs

The Executive Director of the Global Fund, Michel Kazatchkine, has been a vocal and strategic advocate for comprehensive health services for people who use drugs, a population that represents an estimated one-third of new HIV infections outside sub-Saharan Africa. For example, before the 2009 session of the UN Commission on Narcotic Drugs (CND), which sets the direction of global drug control policy, Dr. Kazatchkine wrote to the chairperson of the session to emphasize the "abundant and compelling" evidence in favour of harm reduction measures and urged that the session "send a strong message to the world with clear and specific language that calls for comprehensive harm reduction services". The Global Fund Executive Director went on to congratulate the 26 countries in the CND that had called for explicit inclusion of harm reduction in the notion of services for drug users, noting that their statement gave "hope that we may eventually have a more nuanced policy in the coming years." The strength of these statements attests to the independence of the Global Fund on this issue and its potential as a counterweight to criminal laws and drug policies that undermine HIV prevention, treatment and care for people who use drugs.

CONCLUSION

The Global Fund is already demonstrating its commitment to human rights by investing in human rights programming, developing rights-based processes and undertaking advocacy for human rights. However, there is consensus that, especially in times of resource constraints, much greater and more visible and systematic attention needs to be devoted to human rights in the response to HIV/AIDS, TB and malaria. This is reflected in the strategic plans and priorities of the Global Fund's partners. **The development of the next Global Fund strategic plan is an opportunity to scale up and institutionalize the Global Fund's support for human rights, thus protecting existing investments and promoting effectiveness and efficiency gains in future investments.** Further, rights-based approaches to the three diseases will have, in many cases, significant impacts in other health areas and beyond. Including human rights as a key part of the new strategic plan will enable the Global Fund to increase its impact on HIV, TB and malaria, and on health, development and human rights more broadly.

Especially in times of resource constraints, much greater and more visible and systematic attention needs to be devoted to human rights in the response to HIV/AIDS, TB and malaria.

ENDNOTES

[i] Remarks by Dr. Michel Kazatchkine Executive Director, The Global Fund to Fight AIDS, Tuberculosis and Malaria Human Rights March Press Conference AIDS 2010 (Vienna, Austria), July 20, 2010. Available at: http://www.theglobalfund.org/documents/ed/remarks_iac_human_rights_press_conference_100720.pdf

[ii] Open Society Institute (OSI) and Canadian HIV/AIDS Legal Network (CHLN) (2010), *Commitments and Conundrums: Human Rights and the Global Fund on HIV/AIDS, Tuberculosis and Malaria – Working Draft.* For further information contact Jonathan Cohen at jcohen@sorosny.org

[iii] See, for example, MDG Outcome Document (A/65/L.1) which recognizes that "the respect for and promotion and protection of human rights is an integral part of effective work towards achieving the Millennium Development Goals."

[iv] For example, in a recent review of HIV in Central Asia, Thorne et al conclude that 'Improving coverage of injecting drug users, female sex workers and clients, and migrants with prevention services should be a key priority, including addressing legislative barriers to access, but is impeded by the stigma around behaviours linked with HIV and by a lack of strong political commitment towards serving the needs of these populations.' Thorne, C., Ferencic, N., Malyuta, R., Mimica, J., Niemiec, T., "Central Asia: Hotspot in the Worldwide HIV Epidemic", *The Lancet*, Vol 10, July 2010, p 486.

[v] See, for example, recent study of Watts, C., Zimmerman, C., Eckhaus, T and Nyblade, N. Abstract published at International AIDS Society, 2010, *Stigma-Reduction: an essential component for effective and efficient health systems? Model projection for PMTCT*, Abstract number THPE0853.

[vi] Seale, Bains and Avrett, 'Partnership, Sex and Marginalisation: Moving the Global Fund Sexual Orientation and Gender Identities Strategy', *Health and Human Rights Journal*, Vol 12(1), p 124.

[vii] The *Millennium Declaration*, *Declaration of Commitment, Political Declaration* and the *ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)* recognize the realization of human rights is critical to the achievement of the HIV, health and development goals articulated in those documents.

[viii] See Curry L. A., et al. Achieving large ends with limited means: grand strategy in global health. *Int Health* (2010), doi:10.1016/j.inhe.2010.02.002.

[ix] MDG Summit Outcome Document (A/65/L.1), 12 September 2010, available at: http://www.un.org/en/mdg/summit2010/pdf/mdg%20outcome%20document.pdf . See paragraphs 12, 13, 23, 53 and 55, as well as paragraph 72 (gender equality), 71 (education) and 76 (HIV, malaria and other diseases).

[x] According to Curry et al (above Endnote viii), 'Grand strategy maintains that effective strategy attends not only to what will be done but how it will be done'.

[xi] The Report of the Office of the High Commission for Human Rights on Preventative Maternal Mortality and Morbidity and Human Rights (A/HRC/14/39), 16 April 2010 recognises that the existence of maternal mortality and morbidity is fundamentally linked to violations of women's human rights and that reducing maternal mortality and morbidity therefore requires a rights-based approach. Specific human rights programmes identified in the Report include programmes to address discriminatory laws, polices, practices and gender inequalities in health care and in society ; The Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, "Intersections of Violence Against Women and HIV/AIDS" (E/CN.4/2005/72), 2005 recognises that stigma and discrimination against people living with HIV can also be indirectly linked to maternal mortality and morbidity, as women avoid health care services for fear of being tested, of being coerced, of violations of their right to confidentiality in relation to their health status; Efforts to reduce maternal mortality, decrease gender inequality and combat HIV have been found to have greater impact when combined with programming that strengthens women's legal and economic empowerment (for example, see Sattherwaite, D. "Image Project in South Africa Proposes Use of Microfinance in Struggle Against HIV/AIDS Infection" Accessed on 8 June 2010 at http://www.evancarmichael.com/African-Accounts/1674/IMAGE-Project-in-South-Africa-Proposes-Use-of-Microfinance-in-Struggle-Against-HIVAIDS-Infection.html)

[xii] The proposed objectives of the Stop TB Human Rights Task Force for 2010-2011 are (see http://www.stoptb.org/global/hrtf/about.asp): (i) Develop a policy framework for a rights-based approach to TB prevention, care and control; (ii) Develop and implement a strategic agenda to pursue a rights-based approach through a wide range of stakeholders; (iii) Mainstream human rights approach in Stop TB Strategy, Global Plan and Stop TB efforts; (iv) Advocate for adoption by other constituencies beyond TB; (v) Mobilize resources; and (vi) Monitor and evaluate first actions. The Stop TB Strategy, recommended by the World Health Organisation and adopted by the Stop TB Partnership (which has over 1440 member organizations including the WHO and UNAIDS), provides a comprehensive and inclusive vision for global TB control, incorporating human rights imperatives and health system strengthening. (Global Plan to Stop TB and HIV 2006 – 2015. Available at: http://www.stoptb.org/assets/documents/global/plan/GlobalPlanFinal.pdf).

[xiii] UNAIDS, Strategic Plan 2011-2015 - Second Draft, (draft dated 6 October 2010). Note that the new Strategic Plan will be approved by the UNAIDS Programme Coordinating Board at its December 2010 meeting.

[xiv] WHO, *A Sustainable Health Sector Response to HIV. Global Health Strategy for HIV/AIDS 2011-2015.* Draft (version 3.1), 9 October 2010.

[xv] Available at: http://www.ilo.org/aids/Aboutus/lang--en/index.htm

[xvi] See: http://www.unaids.org/en/Priorities/03_06_Punitive_laws_stigma.asp. Refer also: WHO/UNAIDS (2010), *Technical Guidance Note for Global Fund HIV Proposals- Human Rights and Law*, available at: http://www.who.int/hiv/pub/toolkits/HRandLaw_Technical_Guidance_GlobalFundR10_June2010.pdf; UNAIDS (2010) *Ensuring Non-discrimination on Responses to HIV*, above Endnote xvii.

[xvii] Report of the Executive Director to the GF Board (21st Meeting, 2010, GF/B21/3), p. 6. Available at http://www.theglobalfund.org/documents/board/21/GF-BM21-03_Report_of_the_Executive_Director.pdf;

[xviii] UNAIDS (2010), *Ensuring Non-Discrimination in Responses to HIV*, Report to the26th meeting of the UNAIDS Programme Coordinating Board, http://data.unaids.org/pub/BaseDocument/2010/20100526_non_discrimination_in_hiv_en.pdf

[xix] UN Special Rapporteur on the Right to the Highest Attainable Standard of Health, "Poverty, Malaria and the Right to Health: Exploring the Connections". Speech delivered on 10 December 2007. Available at: http://www.malariaconsortium.org/userfiles/file/Past%20events/10_dec_2007_malaria_paper_with_footnotes__18_dec_07_.pdf; Issue Paper produced by the UNAIDS Reference Group on HIV and Human Rights (2010), "*HIV and Tuberculosis: Ensuring Universal Access and Protection of Human Rights*". Available at: http://data.unaids.org/pub/ExternalDocument/2010/20100324_unaidsrghrtsissuepapertbhrts_en.pdf

[xx] UNAIDS (2010) *Ensuring Non-discrimination on Responses to HIV*, Ibid;

[xxi] International HIV Alliance and UNAIDS (2009). Report: exercise to map HIV related human rights issues as obstacles, priorities, programmes and activities within selected data sources relating to the national response to HIV in 56 countries.

[xxii] See Endnote xvii, above.

[xxiii] Programmes included in the analytical framework of this study were: (1) HIV-related legal services; (2) legal audit and/or law reform; (3) "Know your rights/laws" campaigns; (4) training of health care providers on HIV-related human rights issues; (5) training and sensitization of law enforcement agents, lawyers and/or judges on HIV-related human rights issues; and (6) stigma and discrimination reduction.

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

[xxv] Ibid.

[xxvi] Jurgens et al reviewed evidence from over 900 studies of links between human rights violations and access to HIV services and concluded that: The protection of the human rights of people who use drugs "is important not only because their rights must be respected, protected, and fulfilled, but also because it is an essential precondition to improving the health of people who use drugs. Rights-based responses to HIV and drug use have had good outcomes where they have been implemented, and they should be replicated in other countries." Jurgens, R., Ceste, J., Amon, J., Baral, S., and Beyrer, C. (2010), "People who use drugs, HIV and Human Rights", The Lancet, Volume 376, Issue 9739, Pages 475 - 485, 7 August 2010.

[xxvii] See, for example, China, Global Fund TB grant, Round 8. Referenced in Global Fund (2010) *Innovation and Impact*, p 54. Available at: http://www.theglobalfund.org/documents/replenishment/2010/Global_Fund_2010_Innovation_and_Impact_en.pdf; Eritrea, Global Fund HIV and TB Grant (Round not specified). Referenced in Global Fund (2008), 2008 Progress Report, p 75. Available at: http://www.theglobalfund.org/documents/publications/annualreports/2008/AnnualReport2008.pdf

[xxviii] The UNAIDS Reference Group on Human Rights and HIV has also noted that: The UN Secretary-General's Special Envoy to Stop TB has decried the "woefully inadequate" current investment in TB control, surveillance and research… Efforts and interventions to decrease stigma surrounding both HIV and TB, including among health care workers, and to bolster anti-discrimination laws and their enforcement, are essential to a rights-based approach to TB and HIV." Issue Paper produced by the UNAIDS Reference Group on HIV and Human Rights (2010), "*HIV and tuberculosis: ensuring universal access and protection of human rights*", above Endnote xix.

[xxix] OSI/CHLN, above Endnote ii, p 38.

[xxx] UNDP, UNAIDS and the Global Fund on HIV/AIDS, TB and Malaria (2010), *Review and Analysis of Human Rights Programming in Global Fund-Supported HIV Programmes - Rounds 6 and 7.* Due to be published in late 2010. For further information on this report, contact Mandeep Dhaliwal at Mandeep.dhaliwal@undp.org

[xxxi] The study used current work plans to identify the programmes that were included in the agreed grant. These are amended over the course of the grant to reflect Global Fund-approved changes to the proposal work plans. As such, the work plans record the programmes that are agreed to be implemented under the agreed grant. Further research would be required to confirm whether all of these programmes were ultimately implemented and completed.

[xxxii] The OSI/CHLN report refers to a number of programmes that raise human rights concerns and that have, or might figure in Global Fund proposals. These include: 100% condom use programmes, compulsory detention and 'treatment' of drug users, forced sterilisation, HIV testing and related programmes, and data collection amongst criminalized populations. OSI/CHLN, above Endnote ii, pp 26-32.

[xxxiii] OSI/CHLN, Ibid.

[xxxiv] OSI/CHLN (2010), Ibid.; UNDP/UNAIDS/Global Fund (2010), above Endnote xxx.

[xxxv] See, for example, Curry et al, above Endnote viii, p 2.

[xxxvi] Global Fund (2010), *Innovation and Impact,* above Endnote xxvii, p 53.

[xxxvii] OSI/CHLN, above Endnote ii, p 15.

[xxxviii] For a summary of some of the advocacy for increased attention to human rights undertaken in letters and speeches of Dr Michel Kazatchkine, see OSI/CHLN (2010), Ibid.

[xxxix] "*UNAIDS, STOP TB Partnership Commit to Half TB Deaths in PLHA by 2015*", published on Science Speaks, 22 July 2010. See: http://sciencespeaks.wordpress.com/2010/07/22/unaids-stop-tb-partnership-commit-to-half-tb-deaths-in-plha-by-2015/

[xl] UNAIDS Reference Group on HIV and Human Rights (2010), above Endnote xxviii.

[xli] UNAIDS data shows that key populations are more likely to be reached by HIV prevention programmes in countries that have laws that protect those populations from discrimination. UNAIDS (2008) *Global Report on the AIDS Epidemic*, p 84. Available at: http://data.unaids.org/pub/GlobalReport/2008/JC1510_2008GlobalReport_en.zip