



Independent observer
of the Global Fund

Human Rights Groups Say Global Fund Faces a "Human Rights Dilemma"

[Editor's Note: This is the first of two articles in this issue on the report produced by the human right organisations. See also the next article. GFO plans to publish more articles about this report in future issues.]

The Global Fund faces a human rights dilemma: espousing human rights principles while also being committed to allowing HIV responses to be driven by countries, including countries that resist rights-based policies and programmes or cling to policies that undermine human rights.

Although some CCMs have reached the point of including legal and human rights programmes for marginalised people as priorities, such programmes do not yet feature prominently in Global Fund grants (despite a few notable exceptions).

These are some of the views expressed by the Canadian HIV/AIDS Legal Network and the Open Society Foundations (OSF) in a report on "Human Rights and the Global Fund to Fight AIDS, Tuberculosis and Malaria," released in February 2011.

The report said where HIV programmes and policies have been anchored in human rights principles, there have been notable successes in the fight against the three diseases. Conversely, failure to adopt human-rights based approaches leads to inferior results. For example, marginalisation and criminalisation of men who have sex with men, transgender

persons and sex workers compound their vulnerability to HIV infection and impede their access to HIV services. In addition, "over-reliance on criminalization and law-enforcement approaches to drug use in

countries with injection-driven HIV epidemics results in rampant police violence, over-incarceration without due process in detention environments that fuel HIV infection, and legal and policy restrictions on harm reduction programs such as needle exchange and substitution.”

In the opinion of the authors, the application of human rights principles in the work of the Global Fund merits the same kind of oversight that the Fund brings to such questions as corruption and mismanagement. The report said that the work done by the Office of the Inspector General in relation to corruption “does not seek principally to challenge the sovereignty of governments or the authority of the CCM as an institution. It seeks to ensure that money is well spent and that programs benefit those who need them to the greatest degree.” The report said that the Global Fund should see human rights accountability in a similar light.

According to the Legal Network and OSF, the Global Fund has become an important advocacy voice on the global AIDS scene, including when addressing challenging human rights issues. “While the programs supported by the Global Fund are derived from country-driven processes and not conceived by the Global Fund in Geneva, the fund is nonetheless in a position to shape HIV responses to some degree. At many points, it has had, and will continue to have, the choice to proceed in rights-based or non-rights-based directions. Those choices are likely to be very important for the future of HIV and those affected by it.”

The report briefly described several programmes financed by the Global Fund that have a specific legal and human rights focus. The following are two examples:

- In Round 9, the Global Fund approved a \$47 million regional proposal from South Asia designed to strengthen community-level responses to HIV among men who have sex with men and transgender persons. The proposal included a significant focus on legislative and policy advocacy because several of the countries covered by the proposal – including Afghanistan, Bangladesh, Pakistan, and Sri Lanka – criminalise homosexuality. Under the proposal, where community-level organisations did not exist to mount advocacy initiatives against this criminalisation, they would be created.
- A Global Fund grant provides money to Healthy Options Project Skopje (HOPS) in Macedonia, an NGO which gives free legal advice and assistance to sex workers. This money enables HOPS to retain a part-time legal advisor who offers legal assistance as well as help in securing official documents, making links to government services, and raising awareness of human rights among sex workers.

However, the authors said, these types of initiatives are few and far between. Although many Global Fund proposals contain activities targeting marginalised populations, very few include direct human rights interventions for these populations.

Interventions linked to human rights violations

The report said that, “in addition to funding activities that contribute to respecting, protecting, and fulfilling human rights, the Global Fund can have a positive human rights impact by withholding support from activities that undermine or potentially undermine rights.” The authors cited compulsory drug treatment centres in several countries in Asia as an examples of such activities.

The report referred to a 2009 study by the Western Pacific regional office of the World Health Organization, which raised concerns that the punitive approaches used in compulsory drug treatment centres may negate whatever health benefits they offer – and to other studies that have documented serious human rights abuses in these facilities.

According to the report, although the Global Fund was aware of the human rights violations inherent in these centres, the Fund nevertheless approved grants that support a number of HIV-related activities in

the centres. This includes a Round 6 Vietnam grant where the compulsory treatment centres are referred to as “treatment and education centres.” In a Round 8 proposal, the Vietnam CCM requested significant funds for expanding HIV services in these centres, including the provision of antiretroviral therapy (ART). The proposal was approved.

The authors stated that “even if expanding ART ... in these facilities fulfills a right to care, the benefits of such activities must be weighed against helping to entrench these institutions as part of national HIV responses and possibly reinforcing human rights abuses that occur in them.”

Global Fund Executive Director Michel Kazatchkine explained the Fund’s position in remarks made in July 2010, at the International AIDS Conference. These remarks are quoted in the report, as follows:

“It has recently been drawn to my attention that Global Fund grants finance some services in a number of these centres. We have undertaken an initial analysis of our grant portfolio, which indicates that our grants support a range of HIV prevention and treatment services, as well as some training in providing such services, in some centres. Even providing such services in centres where human rights violations occur poses ethical dilemmas.

“All compulsory drug detention centres should be closed and replaced by drug treatment facilities that work and that conform to ethical standards and human rights norms. At the same time, as long as such centres exist, I strongly believe that detainees should at least be provided with access to effective HIV prevention and treatment, provided in an ethical manner and respectful of their rights and dignity.”

The report states that the Global Fund should not “in any way” support treatment for drug dependency that involves involuntary detention. The report recommends that the Global Fund undertake advocacy, including national-level advocacy, in favour of closing all such detention centres. In addition, the report said, the Global Fund should ensure that the Technical Review Panel (TRP) has sufficient expertise to recommend whether Global Fund support is appropriate in cases where funds for drug treatment centres are requested. This could include ensuring that the TRP has among its members someone with expertise in this area.

Finally, the report said that the Global Fund should make money available to ensure that CCMs have access to material on best practices in drug treatment, and opportunities to visit countries with good practices and demonstrably effective results in drug treatment.

In their report, the Legal Network and OSF said that they believe the Global Fund is in the process of developing “an initiative” that will address the issue of providing funds to treatment centres where human rights violations are known to occur. They did not elaborate.

“Human Rights and the Global Fund to Fight AIDS, Tuberculosis and Malaria” is available [here](#).

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