



BRIEFING NOTE

BACKGROUND

At its 47th Ordinary Session from 12 to 26 May 2010, the African Commission on Human and People's Rights (ACHPR) established a special mechanism for the protection of the rights of people living with HIV (PLHIV) and those at risk, vulnerable to and affected by HIV in Africa (the Committee).

Recognising the enormity of the problem and the need for an effective mechanism, the ACHPR appointed a high powered committee of three comprising the Chairperson, Vice-Chairperson and the Special Rapporteur on the Rights of Women.

The *mandate of the Committee* is:

- a) To seek, request, receive, analyse and respond to reliable information from credible sources including individuals, community-based organisations, non-governmental organisations, specialised agencies, inter-governmental organisations, and State Parties, on the situation and rights of PLHIV and those at risk;
- b) To undertake fact-finding missions, where necessary, to investigate, verify and make conclusions and recommendations regarding allegations of human rights violations;
- c) To engage State Parties and non-state actors on their responsibilities to respect the rights of people living with HIV and those proven to be vulnerable to these infections;
- d) To engage State Parties on their responsibilities to respect, protect and fulfil the rights of people living with HIV and those at risk;
- e) To recommend concrete and effective strategies to better protect the rights of people living with HIV and those at risk;
- f) To integrate a gender perspective and give special attention to persons belonging to vulnerable groups, including women, children, sex workers, migrants, men having sex with men, intravenous drugs users and prisoners; and
- g) To report regularly to the African Commission on Human and Peoples' Rights.

The *UN Special Rapporteur* on the right of everyone to the highest attainable standard of physical and mental health (UN Special Rapporteur), has a strong background in addressing HIV related discrimination. Soon after his appointment, in an interview with Treat Asia in October 2008, Mr Grover responded as follows to a question about how he will define his mission:

A lot of the most successful human rights interventions in health have been exemplified in HIV—particularly the rights-based approach and the involvement



of affected communities, which have made a big difference in terms of whether you treat health as a human right. These have to be replicated in other areas. As an example, access to treatment is a big issue everywhere, not only with HIV. In other countries, the treatment of TB and malaria is becoming a rights-based issue. So the rights-based approach is something we have to carry beyond HIV.

Treatment isn't only from the top down—it's actually about implementing rights and empowering people. A lot of countries think, "What have rights got to do with health?" But if you motivate and activate the community to demand its rights, whether it's the deployment of resources or access to treatment, that means that the community is not dependent on healthcare professionals alone. Healthcare is then more of a team effort, from patients to healthcare workers to the government.

As Special Rapporteur, I hope to address gross and serious violations of the right to health by holding regional consultations with affected communities. Women and children, sex workers, people with HIV, drug users, historically oppressed groups such as natives and indigenous peoples, even health professionals—the voices of these communities have been unheard, and they need to be at the forefront of decision making. Our experience with HIV has shown that community input is extremely important.

It's a big challenge for the Special Rapporteur, especially because this is about health. It's easy to understand the rights-based approach to political rights. With health, people still question it. But that message has to be understood and replicated and implemented across the board.

In his report to the UN General Assembly, dated 31 March 2009, he expands upon these ideas and defines his mandate in the following terms:

... In accordance with his mandate, the Special Rapporteur will continue to further develop cooperation with relevant national and international actors such as Governments, national human rights institutions, United Nations treaty bodies, international institutions, different agencies and programmes and independent experts, as well as health professionals, academics, civil society organizations, community-based organizations of affected peoples and other stakeholders.

... The Special Rapporteur would also like to develop close cooperation with relevant government bodies to help them identify policies and programmes which promote the enjoyment of the right to health. In this context, he underlines the importance of including rights holders, particularly communities, in decision-making processes as they can offer a vast and diverse perspective to various issues central to the right to health. He will therefore consult with affected communities and concerned stakeholders around common goals to ensure the constant progress of the enjoyment of the right to health.

... The Special Rapporteur intends to continue to promote, and encourage others to promote, the right to health. Recognizing the work done in unpacking the



issues relating to the right to health and understanding the relation between health and human rights, he envisages further developing the rights-based approach and the principles of equality, non-discrimination and participation in the context of the right to health. The Special Rapporteur also aims to identify best practices for the operationalization of the right to health. As the new Special Rapporteur, I will be in a position to address serious violations of the right to health worldwide. Basically, the aim is to advance the cause of human rights and health, not only in relation to HIV but also with other major diseases such as tuberculosis [TB], malaria, and hepatitis.

MAIN OBJECTIVE

Within this context, the main objective of this conversation is for both mechanisms to work together towards tangible outcomes aimed at addressing human rights violations of PLHIV and those at risk in Africa.

THEMES AND ISSUES THAT WILL BE ADDRESSED

We have isolated the following main themes that will be addressed during this conversation.

1. The limitations and opportunities presented by the mandate of the Committee

- Exploration of tangible outcomes that can and cannot be achieved from each item in the mandate;
- Exploration of what can and cannot be done proactively; and
- Exploration of what can and cannot be done when a submission is received (i.e. reactively).

2. The structures and mechanisms that will support the work of the Committee

- Can the Secretariat of the ACHPR and the Group of Experts alone provide adequate administrative and substantive support to the Committee?
- Is there room for support from institutions such as UNAIDS and what are the modalities? and
- What possibilities are presented by the establishment of a new support institute for the Committee?

3. How the UN Special Rapporteur and the Committee could work together

- Current and future plans at the UN and at the Committee levels;
- Mechanisms to complement and share rather than duplicate; and
- Specific modalities of working together in a structured manner.



4. How Non-Governmental Organisations and Community Based Organisations can interact and work with the Committee

- What types of issues can NGO's and CBO's submit to the Committee for their consideration and engagement at this point?
- What are the possibilities in the foreseeable future? and
- The mechanics of presenting submissions and what can be expected from the Committee.

PARTICIPANTS AND METHODOLOGY FOR THE DIALOGUE

Approximately thirty people will participate including:

- The three Committee members;
- The UN Special Rapporteur on the Right to Health (abbreviated);
- A representative of the Secretariat of the ACHPR;
- The HRDI team;
- Lawyers from HRDI's partner institutions in Zimbabwe, Mozambique, Namibia, Kenya, Tanzania, Rwanda and Democratic Republic of Congo.
- Prof Frans Viljoen of the Centre for Human Rights, University of Pretoria;
- Mr Pierre Brouard of the Centre for the Study of AIDS, University of Pretoria;
- Mr Patrick Eba of UNAIDS;
- Ms Michaela Clayton of Aids and Rights Alliance of Southern Africa; and
- Mrs Agnes Apea a CBO representative from the National Community of Women Living with HIV/AIDS in Uganda.

The methodology will be participatory and interactive to encourage creative and free sharing of ideas. This conversation will not take the form of a public relations exercise nor of a talk-shop but would rather be focused on delving deeply into strategically important issues that could assist the Committee to develop a tangible way forward.

It will be structured to ensure that while some time will be spent in an open plenary discussion, sufficient time will be set aside for the Committee and the UN Special Rapporteur to discuss ideas in a private working session.

TRANSLATION

There will be facilities for simultaneous translation during both the plenary sessions and the private sessions.