



**Notes from the fourth meeting of the Working Group of the Programme Coordinating Board (PCB) to strengthen the PCB's monitoring and evaluation role on zero tolerance against harassment, including sexual harassment, bullying and abuse of power at UNAIDS**

**DATE: 9 April 2019**

**VENUE: "Virtual" meeting and Conference Room 5, UNAIDS Headquarters, Geneva**

## **1. OPENING OF THE MEETING**

1. The Chair opened the meeting and updated the Working Group on developments since the previous meeting (held on March 25).

## **2. OVERVIEW OF WORK TO DATE**

2. The Chair summarized the Working Group's terms of reference and scope of work. Thus far, she said, the Group had reviewed the Management Action Plan and had presented comments to both the Programme Coordinating Board (PCB) and the UNAIDS Secretariat. It had not yet reviewed prior reports to the PCB from WHO Internal Oversight Services (IOS) and the UNAIDS Secretariat Staff Association to advise on possible actions that may be considered.
3. The Working Group also had not yet addressed the task of recommending options for enhanced reporting on strategic human resource management issues to the PCB. That would be considered in light of the views of independent legal counsel, scheduled to brief the meeting. Similarly, the Group had not yet considered the role of an independent evaluation function to strengthen organizational change, accountability etc. However, there was ongoing and significant work on the Evaluation Policy, led by the UNAIDS Secretariat, including a draft policy which was based on UNDP's experience and input from the UN Evaluation Group. That draft policy had been circulated for comment.
4. The Chair noted that a peer review by Cosponsors' heads of evaluation was scheduled for May 2. Four Working Group members had attended the 29 March multi-stakeholder consultation. All had been asked to review the current Evaluation Policy draft and provide comments. The Working Group would add further comments, if needed.
5. The Chair told the meeting documents for the June session of the PCB had to be submitted in mid-May. The agenda for the June PCB session was not yet final.
6. In discussion, it was suggested that, having heard from WHO/IOS, it would be useful for the Working Group to hear the views of the Staff Association, as well as receive guidance from legal counsel with respect to the responsibilities the Group could assume. Concern was expressed that the Group should not overstep its mandate.
7. Members said they looked forward to continued, detailed discussion of the Management Action Plan, including discussion that takes account of a broader range of relevant evidence. Regarding the Staff Association's engagement with the Working Group, there was support for some form of structured engagement. The Chair noted that the Group's mandate did not empower it to include the Staff Association as a formal member.

## **3. ADVICE FROM THE INDEPENDENT LEGAL COUNSEL**

8. The Chair introduced the independent legal counsel of the Programme Coordinating Board and referred to his input at the PCB Special Session in March 2019.
9. The legal counsel told the Group that it had been properly constituted, but indicated that the mandate entrusted by the PCB did not include monitoring the human resources management of the Secretariat. The Working Group, he said, therefore had limited

competence in terms of the founding ECOSOC resolution of the Joint Programme. In his opinion, aspects of the terms of reference of the Working Group were problematic.

10. The Chair asked that, if the ECOSOC resolution had not granted the PCB a specific role regarding oversight of on human resources matters, where was such oversight lodged? The legal counsel replied that UNAIDS was a hybrid structure; the PCB could take decisions regarding the Joint Programme but not regarding the Secretariat. It was therefore not clear who has competency for monitoring the Secretariat, including with respect to high-level human resources issues. The ECOSOC resolution had not granted the PCB a specific role regarding oversight on human resources issues. Since the Secretariat conceivably could be regarded as a UN organ, it was perhaps best that a legal adviser for the UN advise on such issues of competencies.
11. In discussion it was pointed out that the Independent Expert Panel had noted a lack of adequate oversight regarding human resources management at the Secretariat. This seemed to create a "Catch-22" situation: an issue requiring action had been identified but it was not clear where responsibility lay for taking action.
12. The legal counsel was asked why his interpretation of a limited mandate had not been aired at the previous two PCB meetings. He replied that in his opinion it was not for the PCB to oversee or monitor the Secretariat. He said that legal advice had not been solicited at the 43rd session of the PCB and reminded the meeting that legal counsel could not take the floor without being requested explicitly to do so. In his meeting report, standard after each PCB meeting, he had addressed two questions regarding the legal position of the PCB.
13. Regarding the legal status of the Working Group, the legal counsel told the meeting that it was clear under Paragraph 28 of the modus operandi of the PCB that the Board can set up a Working Group. The current Group therefore is legally constituted. The problem rests with the terms of reference of the Working Group, specifically Item 3 which requires the Group to furnish the PCB with recommendations for more effective monitoring of the work of Secretariat. It does not fall within the competency of the PCB to issue that specific mandate, he said. Asked whether the other elements of the terms of reference were legitimate, the legal counsel said they were.
14. The Chair suggested that inherent in the other items of the terms of reference were competencies related to the issues of harassment, abuse of authority etc. and these may provide the Working Group with some grounds for addressing some of the tasks set out in Item 3. The legal counsel agreed that this could be possible.
15. Members expressed their relief that the Working Group could continue to work on these important issues. They said it was difficult to understand how the PCB could be expected to oversee the work of the Joint Programme without also reviewing strategic management issues at the Secretariat, given that those issues affected the operation and perhaps even the survival of the Joint Programme. They therefore remained confused as to how the Working Group could not deal with Item 3 in the terms of reference.
16. It was suggested that the modality of legal counsel advice during PCB sessions be reviewed. One member expressed discomfort about "folding" Item 3 into the other items of the terms of reference, since the PCB had requested the Working Group to perform the five sets of tasks.
17. Another member reminded that the Working Group was an ad hoc structure, created for a specific purpose. The oversight problem related to the relationship between the PCB

and the UNAIDS Secretariat and should not limit the work of the Working Group, which should be able to provide the PCB with recommendations, it was suggested. The extent to which the PCB could act on those recommendations was a different matter.

18. Some members continued to express confusion about the legal status of the Working Group and of the Special Session of the PCB in March 2019. The Chair clarified the issue. She explained that the Working Group, as an ad hoc structure, had been correctly established and that its recommendations to the PCB were therefore valid. The only question, based on the advice of the independent legal counsel, related to Item 3 of the Working Group's terms of reference.
19. One member asked why the concern regarding Item 3 had not been raised at the December 2019 session of the PCB when the terms of reference had been put to the meeting. The member added that it seemed advisable for the PCB to revise the terms of reference, if needed; the Working Group could not revise its own terms of reference.
20. The legal counsel told the meeting that the legal counsel, after each session of the PCB, prepares a report on legal questions that arose at the session. In his experience, the 43rd session has been the first occasion where questions regarding the mandate and powers of the PCB had arisen.
21. He reiterated that the Working Group did not need a new mandate from the PCB. It could explain its position to the PCB based on the input received from the legal counsel. However, the PCB's mandate was limited and did not extend to oversight over human resources management issues at the Secretariat. The problem lay with the nature of UNAIDS as a hybrid entity. At the time of UNAIDS' creation, it was understood to comprise the Cosponsors only. Since the Secretariat was a very small support structure, ECOSOC had not anticipated a need for the PCB to have an oversight function (e.g. regarding human resources management) over the Secretariat. However, the Secretariat went on to evolve into a large structure.
22. Turning to the question whether the Working Group could recommend actions to the PCB, leaving it to the PCB to decide whether or not it had the mandate to perform those actions, the legal counsel said the Working Group could take account of the legal advice he had presented and decide on that matter.
23. Asked whether the PCB's remit explicitly does not extend to high-level human resources management issues at the Secretariat, the legal counsel said that was one interpretation. A member suggested there may therefore be an alternative interpretation of such remit, since it was not clearly and explicitly delimited in that respect. The legal counsel replied that the functions of the PCB were clearly delimited by the ECOSOC resolutions.
24. The Director of Governance at UNAIDS noted the importance of the discussion and reminded the meeting that the ECOSOC resolutions had reflected the foreseeable mandate and requirements at the time of UNAIDS' creation. However, within 11 years the Secretariat had grown to have 1,000 staff (300 more than currently).
25. The Director of Governance told the meeting that there had been some discussions about the comprehensiveness of the guiding resolutions, but PCB members agreed not to revisit the founding documents. Nevertheless, PCB members had been aware of the evolution of the Joint Programme and the Secretariat and of their respective functions. The second independent evaluation had noted those changes.

26. He added that there had also been discussion about the PCB's monitoring and guidance regarding human resources issues, which had led to the annual update on strategic human resources management issues, which is presented to the PCB. That background implied some space for resolving the dilemmas discussed at today's meeting. Since the PCB receives regular updates on human resources management issues and can query these updates, it perhaps provides a basis for resolving the current questions.
27. The Chair thanked the legal counsel for his contributions.

#### 4. REMAINING SCOPE OF WORK

28. The Chair summarized her understanding of the discussion. It appeared that the Working Group had been correctly founded. It has a legal basis and a legitimate scope of work. The tasks envisaged under Item 3, she suggested, could be covered under other items in the terms of reference, which would not require receiving a revised terms of reference from the PCB.
29. The Chair said there was a need for the Working Group to understand the current status or practice of human resources management reporting to the PCB, and Working Group members should be able to contribute ideas or experiences from their own varied contexts.
30. Members suggested that the Working Group seek further guidance from the PCB Bureau regarding the legal questions raised by legal counsel and the ensuing discussions. Different opinions were expressed on whether the PCB Bureau has the competency to revise the terms of reference or whether that is best left to the next session of the PCB. Members suggested that the independent legal counsel's presence at the face-to-face meeting in early May would be helpful. The Chair said this would be considered.
31. The Director of Governance at UNAIDS noted that an amendment to the terms of reference would have to be made by the PCB. He reminded the meeting that four of the items in the terms of reference were clearly valid and that one was in question; it may be possible to resolve those questions by editing the wording of Item 3.
32. He said it was acceptable for the Working Group to seek the PCB Bureau's guidance on how to present its work at the June 2019 session of the PCB, including any request it may put to the PCB in light of the legal advice received from the legal counsel. That guidance would be reported in the Bureau's report, which is posted on the UNAIDS website.
33. The Chair said she might consult offline with the PCB Bureau regarding next steps related to Item 3 of the Working Group's terms of reference.
34. The meeting agreed to the Chair's suggestion that the Working Group hold one more virtual meeting in April followed by a face-to-face meeting in early May (a date would be confirmed off-line).

#### 5. NEXT STEPS

35. Chair reminded members to review the notes from the 3rd meeting of the Working Group and share their comments.

36. The Chair closed the meeting.

## 6. ADDENDUM

37. Following the Working Group meeting on 9 April, the UNAIDS Secretariat Governance Team and the Chair of this PCB Working Group consulted further with the Independent Legal Counsel. The purpose of this consultation was to clarify the nature of his concern about item 3 of the Working Group's Terms of Reference. Because of which we append the below to these meeting notes, in particular to clarify the meaning of the terms "monitor and guide the work of UNAIDS Secretariat in strengthening and further institutionalizing existing systems to tackle harassment."
38. In light of clarifications provided on the mandate of the Board during the Special Session (28 March 2019) and recalled to the Working Group at its request, it is within the mandate of the Board (as it already happens at each meeting with UNAIDS Secretariat Staff Association (USSA)), to be informed, on a regular basis, of 1) cases of harassment, including sexual harassment, bullying and abuse of authority which may have arisen together with related decisions subsequently taken by competent authorities and 2), as the case may be, of the general measures that the Executive Director intends to take to ensure that the goal of zero tolerance against any form of harassment is met.
39. Within this framework, the Working Group may deem it appropriate to strengthen this monitoring function by recommending, for example, that additional information in this matter be provided.
40. With regards to the guidance function stated in the TOR, the Working Group – after having been apprised of the above information – may suggest to the attention of the Executive Director any type of non-binding proposals it deems appropriate.
41. This being said, it should be kept in mind that in no case it is for the Board to perform tasks and responsibilities which have not been assigned to it by ECOSOC, i.e., human resources management, which are expressly stated in the Modus Operandi as being under the sole responsibility of the UNAIDS Secretariat.

*[Annex follows]*

## Annex

### List of participants

#### **MEMBER STATES – ÉTATS MEMBRES**

##### **African States – États d’Afrique**

###### Madagascar

Marc Rajaonarison, Attaché, Permanent Mission of the Republic of Madagascar to the United Nations Office and specialized institutions in Geneva, Switzerland.

##### **Asian States - États d’Asie**

###### Islamic Republic of Iran – République Islamique d’Iran

Tofigh Sedigh Mostahkam, Minister, Permanent Mission of Iran to the United Nations Office at Geneva and other international organizations in Geneva, Switzerland.

##### **Eastern European States - États d’Europe orientale**

###### Russian Federation – Fédération de Russie

Dilyara Raviлова-Borovik, Deputy Director of the Department of International Organizations, Ministry of Foreign Affairs of the Russian Federation, Moscow, Russian Federation.

##### **Latin American and Caribbean States - États d’Amérique latine et des Caraïbes**

###### Mexico – Mexique

Sofia Varguez, Attaché, Permanent Mission of Mexico to the United Nations Office and other international organizations in Geneva, Switzerland.

##### **Western European and Other States - États d’Europe occidentale et autres États**

###### United Kingdom – Royaume-Uni

Danny Graymore, Head, Global Funds Department, Department for International Development (DfID), Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva, Switzerland.

#### **COSPONSORING ORGANIZATIONS – ORGANISMES COPARRAINANTS**

##### **World Food Programme – Programme Alimentaire Mondial**

Fatiha Terki, Deputy Director, Nutrition Division, World Food Programme, Rome, Italy.

##### **United Nations Population Fund – Fonds des Nations Unies pour la population**

Ms Laurie Newell, Global Coordinator UN Cares, United Nations Population Fund, New York, United States.

**REPRESENTATIVES OF NONGOVERNMENTAL ORGANIZATIONS/PEOPLE LIVING WITH HIV – REPRESENTANTS DES ORGANISATIONS NON GOUVERNEMENTALES / PERSONNES VIVANT AVEC LE VIH**

**Africa – L’Afrique**

Lucy Wanjiku, Team Leader, Positive Young Women Voices (PYWV), Nairobi, Kenya.

**Europe – L’Europe**

Alexander Pastoors, Representative International Affairs, HIV Vereniging Nederland, Amsterdam, Netherlands.

**UNAIDS SECRETARIAT – SECRÉTARIAT DE L’ONUSIDA**

Alison Holmes, Director, Human Resources Management, UNAIDS Headquarters, Geneva, Switzerland.

Vinay Saldanha, Director, Regional Support Team, Eastern Europe and Central Asia, Moscow, Russian Federation.

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