



Report of the second meeting of the Working Group of the Programme Coordinating Board (PCB) to respond to the recommendations of the Joint Inspection Unit (JIU) review of UNAIDS administration

DATE: 12 June 2020

VENUE: Virtual

BACKGROUND

1. The Working Group was established by the PCB to review the recommendations directed at the PCB in the 2019 Joint Inspection Unit (JIU) review of the administration and management of UNAIDS. The Working Group met for the second time virtually on Friday, 12 June 2020.

WELCOME

2. Julia Martin, chair of the Working Group on behalf of PCB Chair Ambassador Deborah Birx of the United States of America, welcomed Working Group members to the second meeting. At the Chair's request, members of the Working Group, all of whom were present, introduced themselves. The Chair informed the Working Group that the presentation of the Working Group's progress report to the full PCB had been recorded the previous day.

APPROVAL OF THE AGENDA

3. The Working Group adopted the agenda. (meeting agenda is attached as Annex 1)

REFLECTIONS ON PCB EFFORTS TO PROVIDE OVERSIGHT AND ENSURE ACCOUNTABILITY

4. The Chair reviewed the background documents provided to Working Group members in advance of the second meeting. These included a copy of the PCB Modus Operandi, a document outlining changes to the Modus Operandi over time, a memorandum on how the PCB has responded to previous independent evaluations (with respect to organizational mandate and strategic direction, roles and responsibilities within the Joint Programme, oversight and accountability and PCB membership and methods) and a memorandum summarizing current practices within the United Nations system regarding the term limits of executive heads. The Chair noted that the original ECOSOC resolutions creating UNAIDS establish the boundaries within which changes can be made to the Modus Operandi.

REVIEW OF JIU FORMAL RECOMMENDATION 3

5. In Formal Recommendation 3, the JIU recommended that by the beginning of 2021, the PCB should revise its Modus Operandi to clarify its roles and responsibilities, embedding oversight and accountability mechanisms in the PCB mandate.
6. Referring to the memorandum on PCB responses to prior evaluations, the Chair noted that the PCB had made changes to PCB oversight procedures over time. These include more frequent reporting by the executive director (twice annually rather than once), monitoring of the status of PCB decisions, changes over time in performance monitoring under the Unified Budget, Results and Accountability Framework (UBRAF), actions to expand the evidence base for evaluation of the Joint Programme, regular updates on strategic human resource issues and, in response to the Independent Review Panel's recommendations, acceptance of the Management Action Plan to eliminate harassment, bullying and abuse of power in the Secretariat. In response to questions posed prior to the meeting by the Chair, the PCB's legal counsel had provided various legal opinions on aspects of the JIU recommendations that would be kept on hand and consulted, as needed, to inform the Working Group's deliberations during the second meeting and subsequent meetings.

7. To facilitate the Working Group's consideration of JIU Formal Recommendation 3, the Chair posed several framing questions for consideration by the Working Group:
 - PCB oversight of the Joint Programme was intentionally designed at the outset to be light, recognizing that the HIV pandemic constituted a global emergency. Does this approach remain relevant or appropriate?
 - Does the following categorization capture the different "lanes" within which the PCB provides oversight: programmatic/strategic, resource allocations, performance monitoring, policies regarding internal operations, fiduciary oversight?
 - Are there particular oversight "lanes" that the PCB currently does well? Are there those where oversight should improve?
 - The development, approval and monitoring of performance under the UBRAF serve as important opportunities for PCB oversight and accountability. Are these processes working to promote effective oversight and accountability – for the Joint Programme as a whole, and for individual members of the Joint Programme?
8. The Working Group first explored whether changes to the Modus Operandi was the only means of clarifying the PCB oversight role or whether alternatives to amending the Modus Operandi might be available; the Chair advised that the choice of approach was up to the Working Group and that all options should be considered. It was noted that any proposed changes to the mandate of the PCB must be decided on by ECOSOC but that the PCB has the authority to make procedural changes as long as those changes remain within the mandate of the PCB. The Chair noted the importance of having a strong rationale to present to the PCB for either outcome - Working Group recommending changes to the Modus Operandi or leaving the Modus Operandi as is. The Working Group discussed the possibility of creating a separate document to the Modus Operandi that would serve the purpose of interpreting the ECOSOC resolution and the Modus Operandi as they pertain to the role of PCB oversight. The Working Group flagged that creating another governance document could potentially create confusion about which of the governance documents should supersede the others on key oversight and accountability issues. The Working Group agreed that Paragraphs 4 and 5 of the Modus Operandi, along with Annex 1 of the Modus Operandi, were of particular importance with respect to the PCB's oversight and accountability functions. The Working Group agreed that Cosponsors should be engaged in discussions regarding any recommended changes to the Modus Operandi.
9. It was observed that JIU Recommendation 3 serves as the endpoint for the JIU's other recommendations. For example, should the PCB elect to adopt JIU Formal Recommendation 5 (to create an independent and external oversight committee), this would need to be reflected in the Modus Operandi. It was noted that Recommendation 5 would be discussed at the next meeting of the Working Group.
10. The Working Group discussed the origins of the governance approach for the Joint Programme and whether the original approach to governance remained appropriate. Citing the unique nature of the Joint Programme, Working Group members suggested that the governance approaches used for other United Nations entities might not be wholly applicable to the Joint Programme. It was suggested that any governance changes should ensure that the Joint Programme remains agile and responsive to changes in the epidemic landscape.
11. Consensus emerged that the Working Group should explore all ways to clarify the PCB's oversight and accountability functions, including consideration of amendments to the Modus Operandi. It was agreed that the Chair would provide the Working Group with examples of the articulation of oversight and accountability functions in the governing

documents for other United Nations organizations to identify language or approaches that might be useful with respect to UNAIDS. It was agreed the Chair, drawing on feedback provided by Working Group members, would propose amendments to Paragraphs 4 and 5 and Annex 1 of the Modus Operandi for consideration by the Working Group. The provision of draft language amendments should not be misinterpreted that the Working Group has agreed to re-open the Modus Operandi. The Working Group agreed that members would study Paragraphs 4 and 5 and Annex 1 of the Modus Operandi to determine whether key oversight roles of the PCB are effectively and sufficiently addressed in the current language. It was agreed that the Working Group would explore possible changes to Paragraphs 4 and 5 and Annex 1 of the Modus Operandi between the Working Group's second and third meetings via email communications or virtual intersessional exchanges.

REVIEW OF JIU INFORMAL RECOMMENDATION 4

12. In Informal Recommendation 4, the JIU recommended a re-evaluation of the relevance and validity of the guiding principles for Cosponsoring organizations, as well as exploration of stronger linkages between the PCB and the governing boards of Cosponsors.
13. The Working Group reviewed the current version of the guiding principles for Cosponsorship in the Joint Programme. It was noted that the guiding principles had been prepared by the CCO and then approved by the PCB. There was agreement that editorial changes to the guiding principles were needed in order to bring them up to date (e.g. deleting reference to the Unified Budget and Workplan, which has been superseded by the UBRAF). There was agreement that the guiding principles should be re-examined in light of important changes in the allocation of funding within the Joint Programme, implementation of a new operating model for UNAIDS, and changes in the broader HIV and global health environment. It was agreed that the Working Group should consider whether certain criteria outlined in the guiding principles remain appropriate or should be amended (for example, the requirement of US\$ 4 million for HIV activities from each Cosponsor's own funding, and HIV activities in at least 40% of countries). The issue of the need for further monitoring of the guiding principles was raised, though it was also noted that they are guiding principles and not binding rules or regulations. It was agreed that the Cosponsors should be involved in any changes to the guiding principles, as the Cosponsors articulated the original guiding principles. One suggestion was for the Working Group to provide consolidated recommendations to the Committee of Cosponsoring Organizations (CCO), which would then recommend specific changes to the guiding principles for consideration by the PCB. Working Group members agreed that the Cosponsors should hold the pen on this and that the Working Group should engage with Cosponsors in a constructive dialogue. It was agreed that the Chair would seek legal guidance regarding legally appropriate means for engaging Cosponsors in discussions regarding possible changes to the guiding principles. It was agreed that the Working Group would, following the second meeting, carefully review the guiding principles to assess the need for changes, taking into account editorial issues, whether specific principles remain valid and up-to-date, whether any principles are missing, specific wording changes that might be needed to the guiding principles and mechanisms for monitoring adherence to the principles over time.
14. The Working Group then examined the JIU's recommendation to strengthen linkages between the PCB and the governing boards of Cosponsors. It was agreed that the PCB has an important role to play in keeping HIV and the Joint Programme on the agendas of Cosponsors' governing boards. However, it was observed that the weakness or neutrality of many PCB decision points (such as those that merely "take note" of a particular report or activity) impedes the ability of Cosponsor governing boards to

understand and take on board pertinent PCB decisions. It was suggested that PCB Member States should ensure on-going communications with their colleagues who represent the same Member State on Cosponsors' governing boards, towards the goal of keeping HIV on the agenda of each Cosponsor governing board.

15. To inform the Working Group's deliberations regarding implementation options for JIU Informal Recommendation 4, the Chair asked Cosponsors to reflect on the factors that could strengthen or weaken and undermine linkages between the PCB and Cosponsors' governing boards, and how to mitigate these risks. It was agreed that the Chair, upon the Working Group's receipt of Cosponsors' reflections regarding linkages, would invite the Working Group to provide suggestions by email regarding steps needed to improve the linkages between the PCB and the Cosponsors' governing boards and to fully leverage the role of the PCB in keeping HIV on the agenda of these governing boards.

REVIEW OF JIU INFORMAL RECOMMENDATION 7

17. In Informal Recommendation 7, the JIU said: "The PCB is encouraged to open a dialogue with the United Nations Secretary-General on [the term limit of the Executive Director and explicit performance expectations for the position] to assist in providing more clarity and transparency in its expectations of the leadership of UNAIDS, and more certainty in succession planning."
18. The Chair noted that while the ECOSOC resolutions and Modus Operandi make clear that the executive director reports to the PCB, it is the Secretary-General, not the PCB, who is responsible for appointing the executive director, at the recommendation of the Cosponsors. The PCB has assumed a role in the vetting of executive director candidates, but both the executive director's hiring and performance review sit with the Secretary-General. However, individual PCB Member States are not precluded from expressing an opinion to the Secretary-General, including with respect to the hiring or performance of the executive director.
19. The Working Group reviewed the approach of other United Nations entities regarding term limits for executive heads. Term limits of 3-5 years for executive heads are common within the United Nations system, with Cosponsors typically limiting executive heads to terms of 4-5 years. The JIU has recommended that United Nations executive heads be limited to two successive terms of no more than five years per term. In practice, the UNAIDS executive director has a renewable two-year term, with no cap on the number of terms the executive director may serve.
20. The Working Group agreed that the terms for the UNAIDS executive director should be brought into line with practices within the United Nations system. It was agreed that following the second meeting, the Chair would obtain examples of performance expectations or criteria for executive heads of United Nations entities.
21. There was a discussion pertaining to the way forward for implementing term limits for the UNAIDS executive director. Previous opinion from the PCB's legal counsel indicated that limiting the term of the executive director could be done only by ECOSOC rather than by the PCB acting on its own. It was also suggested, based on prior legal opinion, that the PCB could not petition the Secretary-General regarding the executive director's performance or other issue, but instead could draw attention to key issues in PCB decisions and ask the executive director to report back on such issues. However, individual Member States, as members of the United Nations, are able to approach the Secretary-General individually, but not on behalf of the PCB. Working Group members expressed concern that these restrictions effectively limit the PCB from communicating

with the Secretary-General. It was agreed that the Chair, following the second meeting, would approach legal counsel again to obtain additional clarity on these matters.

LOOKING FORWARD TO PCB MEETING AND THIRD WORKING GROUP MEETING

22. Discussion turned to the third meeting of the Working Group, scheduled for September. The Chair noted that it remained her hope to have the third meeting face to face, for a full day. In deciding whether the third meeting can be held face to face, it was noted that the decision would need to comply with the guidance and regulations of two authorities – the Swiss government and the World Health Organization. Were a face-to-face meeting to align with these two authorities, it was noted that the Kofi Annan Room could accommodate a full meeting of the Working Group, consistent with physical distancing. In the event a face-to-face meeting is not possible in September, the Chair advised that back-to-back half-day virtual meetings would likely be required for the Working Group's third meeting.
23. Noting the hard December deadline for the Working Group's work, Working Group members asked whether additional meetings might be required to ensure the ability of the Working Group to fulfil the task assigned to it by the PCB. It was agreed that the Chair, following the second meeting, would assess the need for additional meetings. Should it appear that additional meetings are warranted, the Chair will propose dates in July or August, taking into account holiday schedules of Working Group members. A list of follow-up actions can be found in Annex 2.
24. Working Group members asked about the possibility of having legal counsel in attendance at future Working Group meetings. It was noted that legal counsel is quite diligent in turning around opinions quickly in response to queries.

ANY OTHER BUSINESS

25. In the absence of other business, the meeting was adjourned.

Annex 1

UNAIDS PCB Working Group on the Recommendations of the Joint Inspection Unit Report (2019)

DATE: Friday, 12 June 2020

TIME: 14:00-18:00 (Geneva time)

VENUE: Skype meeting (Virtual)

MEETING DRAFT AGENDA

1. Welcome

2. Approval of agenda

3. Reflections on PCB efforts to provide oversight and ensure accountability

- Review of background memorandum and supporting meeting documents

4. Review of JIU Formal Recommendation 3: “By the beginning of 2021, the PCB should revise its Modus Operandi to clarify its roles and responsibilities and imbed oversight and accountability mechanisms in the oversight of UNAIDS and the Secretariat.”

- Review and discuss specific findings from the JIU 2019 report and PCB responses to past independent evaluations and expert panels

Guiding questions for consideration:

- PCB oversight of Joint Programme was intentionally designed at the outset to be light, recognizing that the HIV pandemic constituted a global emergency. Does this approach remain relevant or appropriate?
- Does the following categorization capture the different “lanes” within which the PCB provides oversight: programmatic/strategic, resource allocations, performance monitoring, policies regarding internal operations (e.g. human resources), fiduciary oversight?
- Are there particular oversight “lanes” that the PCB currently does well? Are there those where oversight should improve?
- The development, approval and monitoring of performance under the Unified Budget, Results and Accountability Framework (UBRAF) serve as an important opportunity for PCB oversight and accountability. Are these processes working to promote effective oversight and accountability – for the Joint Programme as whole, and for individual members of the Joint Programme?

5. Review of JIU Informal Recommendation 4: “The relevance and validity of the guiding principles [for co-sponsoring organizations] should be re-evaluated, and stronger linkages between PCB and the governing bodies of co-sponsors should be explored.”

- Review and discuss changes over time regarding the role of the co-sponsor organizations and the guiding principles as outlined in the Modus Operandi
 - see Memorandum

6. Review of JIU Informal Recommendation 7: “PCB is encouraged to open a dialogue with the United Nations Secretary-General on [the term limit of the Executive Director and explicit performance expectations for the position]. To assist in providing more clarity and transparency in its expectations of the leadership of UNAIDS, and more certainty in succession planning.”

- Review and discuss summary of term limits of UN bodies

7. Looking forward to PCB meeting and Third Working Group meeting

8. AOB

Annex 2: Follow-up Actions from the Second Meeting of the PCB Working Group on the JIU Recommendations

Working Group Members

1. The Working Group agreed that members would study Paragraphs 4 and 5 and Annex 1 of the Modus Operandi to determine whether key oversight roles of the PCB are effectively and sufficiently addressed in the current language. *Please provide any reflections or line edits to Julia Martin and Mike Isbel by July 30.*
2. Working Group requested to review the Cosponsor guiding principles to consider the need for any changes, taking into account editorial issues, whether specific principles remain valid and up-to-date, whether any principles are missing or if there is a need for further monitoring, and specific wording changes that might be needed to the guiding principles. *Please provide all inputs to Julia Martin and Mike Isbel by July 30.*
3. The Working Group to provide suggestions regarding steps needed to improve the linkages between the PCB and the Cosponsors' governing boards and to fully leverage the role of PCB in keeping HIV on the agenda of these governing boards. [Note: The Chair, upon the Working Group's receipt of Cosponsors' reflections regarding linkages – see #8- will provide these to the Working Group] *Please provide all inputs to Julia Martin and Mike Isbel by July 30.*

Working Group Chair

4. The Chair will propose amendments to Paragraphs 4 and 5 and Annex 1 of the Modus Operandi for consideration by the Working Group.
5. PCB Legal Counsel will be requested to advise on alternate approaches to clarifying the role of PCB oversight that do not include opening the Modus Operandi.
6. PCB Legal Counsel will be sought regarding the legally appropriate means for engaging Cosponsors in discussion regarding possible changes to the guiding principles.
7. The Chair will obtain examples of performance expectations or criteria for executive heads of United Nations entities, and will seek Legal Counsel advice on options for how the PCB or its Member States may approach the Secretary General on matters related to the performance and term limits of the executive director position.

Cosponsors

8. Cosponsors to provide written input to the Chair on the factors that weaken or undermine linkages between the PCB and Cosponsors' governing boards, and how to mitigate these risks. *Please provide all inputs to Julia Martin and Mike Isbel by July 30.*