

Summary of the PCB Bureau meeting of 28 February 2008

Present: Prangtip Kanchanahattakij (Thailand), David Hohman (USA), Paul Spiegel (UNHCR, representing Cosponsors), and Zonnibel Woods (representing PCB NGOs) joined by phone

Absent: Mamadou Seck (Senegal)

UNAIDS Secretariat: Debbie Landey (Deputy Executive Director), Gian Luca Burci (Legal Counsel), As Sy (Director, PEX), Helen Frary (Chief, BUR), Eddy Beck (EMP) and Jacek Tyszko (PEX/BUR)

The Bureau met to hear the opinion of the Legal Counsel of WHO and UNAIDS concerning the steps taken by the Bureau in the process of establishing the Oversight Committee for the Second Independent Evaluation of UNAIDS and to discuss next steps following the objection by Japan and the cosponsors.

The Legal Counsel presented his opinion on the process undertaken by the Bureau. Based on the PCB modus operandi, the PCB Bureau's terms of reference and the mandate given by the 21st PCB meeting to the Bureau, he questioned the Bureau's authority concerning the process of the establishment of the Oversight Committee, in particular, its decision to reopen the decision concerning the cosponsors' membership in the Committee. In his view, moreover, the Bureau's message to the PCB members of 8 February 2008 constituted a request for an electronic vote by the members of the PCB outside a regularly convened meeting which is not currently foreseen in the PCB modus operandi, nor was authorized by the PCB in this particular case. Therefore, the steps the Bureau had taken could be legally questioned. In addition, the Bureau had proposed a new element - the Cosponsor's and the Secretariat's liaison role with the Oversight Committee, which had not been previously discussed by the Board. As the Bureau received only eight responses from PCB members to its call for input, any follow-up action by the Bureau could also be questioned on procedural grounds.

Commenting on the three options the Bureau presented in its email of 8 February, the Legal Counsel suggested that there could be a fourth option - that the Cosponsor member of the Oversight Committee could agree on a process to manage real or perceived conflicts of interest of its members. The latter would be requested to disclose their interests and may have to reclude themselves from either meetings or the adoption of decisions of the committee.

The Bureau discussed the legal opinion and took note of the need to clarify working procedures in the future, bearing in mind the Bureau's role in facilitating inter-sessional work in accordance with its Terms of Reference and PCB decisions. One member of the Bureau further noted that the 21st PCB decision on the establishment of the Oversight Committee had foreseen the use of electronic communications and that there was no

provision in the PCB's modus operandi that specifically excludes any decision making between PCB meetings or the use of electronic communications. The Bureau reemphasized that its intention was not to alter the PCB decision but rather to seek additional guidance from the PCB in order to carry out the task assigned to it by the 21st PCB. The Bureau noted that, besides the representative of the co-sponsors, only one PCB member, who had expressed a preference in response to the PCB Bureau's email, later registered its disagreement with the process.

In addition to the conflict of interest issue, the Bureau also took into consideration that only one nominee for membership on the Oversight Committee was openly HIV+: the criteria for Committee membership adopted by the PCB specified that at least two members should be HIV+.

In view of the above, the Bureau considered the following options as a way forward:

1. The evaluation process should continue on an interim basis, with the Oversight Committee as proposed by the Bureau, with outstanding issues to be decided by the PCB in April;
2. The evaluation process should be stopped after the first meeting of the Oversight Committee scheduled for 4-5 March (another meeting was planned for 15-16 April);
3. The evaluation process should be put on hold immediately pending resolution of outstanding issues by the 22nd PCB.

In response to a request for his opinion on the above, the Legal Counsel noted that all three options carried an element of risk: continuation could be questioned from the point of view of the legitimacy of the Oversight Committee (process of its establishment and change of the PCB decisions concerning Cosponsors and HIV+ members) while suspending the process could be seen as not having fulfilled the PCB mandate to the Bureau. In the light of his previous views, the Legal Counsel suggested that the suspension of the process might be the most rational solution in view of the issues raised by the process followed so far.

After discussing all aspects of the three options, the Bureau decided that:

1. the evaluation process should be suspended immediately;
2. a message from the PCB Bureau to PCB constituencies (member states, Cosponsors and PCB NGOs) explaining the suspension and suggesting a way forward should be sent as soon as possible;
3. a paper providing possible solutions on outstanding issues should be drafted and presented by the Bureau to the 22nd PCB meeting;
4. the agenda for the PCB meeting should be revised and reissued.

The Bureau discussed the issue of how to communicate this to the ten proposed members of the Oversight Committee. The Bureau requested the Secretariat to send a message cancelling the meeting of 4-5 March and explaining that, due to procedural problems, the process is postponed until the 22nd PCB meeting. The Bureau also agreed that the current composition of the Committee would be resubmitted to the PCB for approval and, depending on the outcomes of the discussion on outstanding issues, the membership of the Committee could be enlarged to provide for a Cosponsor representative and an additional openly HIV+ member.